SPEECH

OF THE

HONORABLE

JAMES A. BAYARD,

OF

DELAWARE.

February 19, 20, 1802.

ON THE BILL RECEIVED FROM THE SENATE, ENTITLED "AN ACT TO REPEAL CERTAIN ACTS RESPECTING THE ORGANIZATION OF THE COURTS OF THE UNITED STATES."

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MR. BAYARD'S SPEECH.

Mr. CHAIRMAN,

I MUST be allowed to expreſs my ſurpriſe at the courſe purſued by the honorable gentleman from Virginia (Mr. Giles) in the remarks which he has made on the ſubject before us. I had expected that he would have adopted a different line of conduct. I had expected it as well from that ſentiment of magnanimity which ought to have been inſpired by a ſenſe of the high ground he holds on the floor of this houſe, as from the profeſſions of a deſire to conciliate, which he has ſo repeatedly made during the ſeſſion.—We have been invited to bury the hatchet, and brighten the chain of peace. We were diſpoſed to meet on middle ground.—We had aſſurances from the gentleman, that he would abſtain from reflections on the paſt, and that his only wiſh was that we might unite in future in promoting the welfare of our common country.—We confided in the gentleman's ſincerity, and cheriſhed the hope, that if the diviſions of party were not baniſhed from the houſe, its ſpirit would be rendered leſs intemperate. Such were our impreſſions, when the maſk was ſuddenly thrown aſide, and we ſaw the torch of diſcord lighted and blazing before our eyes. Every effort has been made to revive the animoſities of the houſe, and to inflame the paſſions of the nation.—I am at no loſs to perceive why this courſe has been purſued. The gentleman has been unwilling to rely upon the ſtrength of his ſubject, and has therefore determined to make the meaſure a party queſtion. He has probably ſecured ſucceſs, but would it not have been more honorable and more commendable to have left the deciſion of a great conſtitutional queſtion to the underſtanding and not to the prejudices of the houſe. It was my ardent wiſh to diſcuſs the ſubject with calmneſs and deliberation, and I did intend to avoid every topic which could awaken the ſenſibility of party.—This was my temper and deſign when I took my ſeat yeſterday. It is a courſe at preſent we are no longer at liberty to purſue. The gentleman has wandered far, very far from the points of the debate, and has extended his animadverſions to all the prominent meaſures of the former adminiſtrations. In following him through his preliminary obſervations, I neceſſarily loſe ſight of the bill upon your table.

The gentleman commenced his ſtrictures with the philoſophic obſervation, that it was the fate of mankind to hold different opinions as to the form of government which was preferable. That ſome were attached to the monarchical, while others thought the republican more eligible. This, as an abſtract remark, is certainly true, and could have furniſhed no ground of offence, if it had not evidently appeared that an illuſion was deſigned to be made to the parties in

this country. Does the gentleman ſuppoſe that we have a leſs lively recollection than himſelf of the oath which we have taken to ſupport the conſtitution; that we are leſs ſenſible of the ſpirit of our government, or leſs devoted to the wiſhes of our conſtituents? Whatever impreſſion it might be the intention of the gentleman to make, he does not believe that there exiſts in the country an anti-republican party. He will not venture to aſſert ſuch an opinion on the floor of this houſe. That there may be a few individuals having a preference for monarchy is not improbable; but will the gentleman from Virginia, or any other gentleman affirm in his place, that there is a party in the country who wiſh to eſtabliſh monarchy? Inſinuations of this ſort belong not to the legiſlature of the union. Their place is an election ground or an ale-houſe. Within theſe walls they are loſt; abroad they have had an effect, and I fear are ſtill capable of abuſing popular credulity.

We were next told of the parties which have exiſted, divided by the oppoſite views of promoting executive power and guarding the rights of the people. The gentleman did not tell us in plain language, but he wiſhed it to be underſtood, that he and his friends were the guardians of the people's rights, and that we were the advocates of executive power.

I know that this is the diſtinction of party which ſome gentlemen have been anxious to eſtabliſh; but it is not the ground on which we divide. I am ſatisfied with the conſtitutional powers of the executive, and never wiſhed nor attempted to encreaſe them; and I do not believe that gentlemen on the other ſide of the houſe ever had a ſerious apprehenſion of danger from an increaſe of executive authority. No, ſir, our views as to the powers which do and ought to belong to the general and ſtate governments, are the true ſource of our diviſions. I co-operate with the party to which I am attached, becauſe I believe their true object and end is an honeſt and efficient ſupport of the general government, in the exerciſe of the legitimate powers of the conſtitution.

I pray to God I may be miſtaken in the opinion I entertain as to the deſigns of gentlemen to whom I am oppoſed.—Thoſe deſigns I believe hoſtile to the powers of this government. State pride extinguiſhes a national ſentiment. Whatever power is taken from this government is given to the ſtates.

The ruins of this government aggrandize the ſtates. There are ſtates which are too proud to be controlled. Whoſe ſenſe of greatneſs and reſource renders them indifferent to our protection, and induces a belief, that if no general government exiſted, their influence would be more extenſive and their importance more conſpicuous. There are gentlemen who make no ſecret of an extreme point of depreſſion, to which the government is to be ſunk. To that point we are rapidly progreſſing. But I would beg gentlemen to remember, that human affairs are not to be arreſted in their courſe, at artificial points. The impulſe now given may be accelerated by cauſes at preſent out of view. And when thoſe who now deſign well, with

to ſtop, they may find their powers unable to reſiſt the torrent. It is not true that we ever wiſhed to give a dangerous ſtrength to executive power. While the government was in our hands it was our duty to maintain its conſtitutional balance, by preſerving the energies of each branch. There never was an attempt to vary the relation of its powers. The ſtruggle was to maintain the conſtitutional powers of the executive. The wild principles of French liberty were ſcattered through the country. We had our jacobins and diſorganizers. They ſaw no difference between a King and a Preſident, and as the people of France had put down their King, they thought the people of America ought to put down their Preſident. They who conſidered the conſtitution as ſecuring all the principles of rational and practicable liberty, who were unwilling to embark upon the tempeſtuous ſea of revolution, in purſuit of viſionary ſchemes, were denounced as monarchiſts. A line was drawn between the government and the people, and the friends of the government were marked as the enemies of the people. I hope, however, that the government and the people are now the ſame ; and I pray to God that what has been frequently remarked, may not in this caſe be diſcovered to be true, that they who have the name of people the moſt often in their mouths, have their true intereſts the moſt ſeldom at their hearts.

The honorable gentleman from Virginia wandered to the very confines of the federal adminiſtration, in ſearch of materials the moſt inflammable and moſt capable of kindling the paſſions of his party.

He repreſents the government as ſeizing the firſt moment which preſented itſelf to create a dependent monied intereſt, ever devoted to its views. What are we to underſtand by this remark of the gentleman ? Does he mean to ſay that Congreſs did wrong in funding the public debt ? Does he mean to ſay that the price of our liberty and independence ought not to have been paid ? Is he bold enough to denounce this meaſure as one of the federal victims marked for deſtruction ? Is it the deſign to tell us that its day has not yet come, but is approaching ; and that the funding ſyſtem is to add to the pile of federal ruins ? Do I hear the gentleman ſay we will reduce the army to a ſhadow, we will give the navy to the worms, the mint which preſented the people with the emblems of their liberty and of their ſovereignty, we will aboliſh—the revenue ſhall depend upon the winds and waves, the judges ſhall be made our creatures, and the great work ſhall be crowned and conſecrated by relieving the country from an odious and oppreſſive public debt. Theſe ſteps, I preſume are to be taken in progreſſion.

The gentleman will pauſe at each and feel the public pulſe. As the fever increaſes he will proceed, and the moment of delirium will be ſeized to finiſh the great work of deſtruction.

The aſſumption of the ſtate debts has been made an article of diſtinct crimination. It has been aſcribed to the worſt motives ; to a deſign of increaſing a dependent monied intereſt. Is it not well known, that thoſe debts were part of the price of the revolution ? That they roſe in the exigency of our affairs, from the efforts of the

particular ſtates, at times when the federal arm could not be extended to their relief? Each ſtate was entitled to the protection of the union, the defence was a common burthen, and every ſtate had a right to expect that the expences attending its individual exertions in the general cauſe, would be reimburſed from the public purſe. I ſhall be permitted further to add that the United States, having abſorbed the ſources of ſtate revenue, except direct taxation, which was required for the ſupport of the ſtate governments, the aſſumption of theſe debts were neceſſary to ſave ſome of the ſtates from bankruptcy.

The internal taxes are made one of the crimes of the federal adminiſtration. They were impoſed, ſays the gentleman, to create a hoſt of dependents on executive favor. This ſuppoſes the paſt adminiſtrations to have been not only very wicked, but very weak. They lay taxes in order to ſtrengthen their influence. Who is ſo ignorant as not to know that the impoſition of a tax would create an hundred enemies for one friend. The name of exciſe was odious; the details of collection were unavoidably offenſive, and it was to operate upon a part of the community leaſt diſpoſed to ſupport public burthens, and moſt ready to complain of their weight. A little experience will give the gentleman a new idea of the patronage of this government. He will find it not that dangerous weapon in the hands of the adminiſtration which he has heretofore ſuppoſed it, he will probably diſcover that the poiſon is accompanied by its antidote. And that an appointment of the government, while it gives to the adminiſtration one lazy friend, will raiſe up againſt it ten active enemies.

No! The motive aſcribed for the impoſition of the internal taxes is unfounded, as it is uncharitable. The federal adminiſtration in creating burthens to ſupport the credit of the nation, and to ſupply the means of its protection, knew that they riſked the favor of thoſe upon whom their favor depended. They were willing to be the victims when the public good required.

The duties on imports and tonnage furniſhed a precarious revenue; a revenue at all times expoſed to deficiency from cauſes beyond our reach. The internal taxes offered a fund leſs liable to be impaired by accident; a fund which did not rob the mouth of labour, but was derived from the gratification of luxury. Theſe taxes are an equitable diſtribution of the public burthens. Through this medium the Weſtern country is enabled to contribute ſomething to the expences of a government which has expended and daily expends ſuch large ſums for its defence. When theſe taxes were laid, they were indiſpenſable. With the aid of them it has been difficult to prevent an encreaſe of the public debt. And notwithſtanding the fairy proſpects which now dazzle our eyes, I undertake to ſay, if you aboliſh them this ſeſſion, you will be obliged to reſtore them or ſupply their place by a direct tax before the end of two years. Will the gentleman ſay, that the direct tax was laid in order to enlarge the bounds of patronage. Will he deny that this was a meaſure to which we had been urged for years by our adverſaries, becauſe they foreſaw in it the ruin of federal power. My word for it, no adminiſtration will

ever be ſtrengthened by a patronage united with taxes which the people are ſenſible of paying.

We were next told, that to get an army an Indian war was neceſſary. The remark was extremely bald, as the hon. gentleman did not alledge a ſingle reaſon for the poſition. He did not undertake to ſtate, that it was a wanton war, or provoked by the government. He did not even venture to deny, that it was a war of defence, and entered into in order to protect our brethren on the frontiers from the bloody ſcalping knife, and murderous tom-a-hawk of the ſavage. What ought the government to have done? Ought they to have eſtimated the value of the blood which probably would be ſhed, and the amount of the devaſtation likely to be committed before they determined on reſiſtance? They raiſed an army and after great expence and various fortune they have ſecured the peace and ſafety of the frontiers. But, why was the army mentioned on this occaſion, unleſs to forewarn us of the fate which awaits them, and to tell us, that their days are numbered? I cannot ſuppoſe, that the gentleman mentioned this little army diſtributed on a line of three thouſand miles, for the purpoſe of giving alarm to three hundred thouſand free and brave yeomanry ever ready to defend the liberties of the country.

The hon. gentleman proceeded to inform the committee, that the government, availing itſelf of the depredations of the Algerines, created a navy. Did the gentleman mean to inſinuate, that this war was invited by the United States? Has he any documents or proof to render the ſuſpicion colourable? No, ſir, he has none. He well knows that the Algerine aggreſſions were extremely embarraſſing to the government. When they commenced, we had no marine force to oppoſe to them. We had no harbours or places of ſhelter in the Mediterranean. A war with theſe pirates could be attended with neither honor nor profit. It might coſt a great deal of blood, and in the end it might be feared that a conteſt ſo far from home, ſubject to numberleſs hazards and difficulties, could not be maintained. What would gentlemen have had the government to do? I know there are thoſe who are ready to anſwer—abandon the Mediterranean trade. But would this have done? The corſairs threatened to paſs the Streights, and were expected in the Atlantic. Nay, ſir, it was thought that our very coaſts would not have been ſecure.

Will gentlemen go farther and ſay, that the United States ought to relinquiſh their commerce. I believe this opinion has high authority to ſupport it. It has been ſaid, that we ought to be only cultivators of the earth, and make the nations of Europe our carriers.

This is not an occaſion to examine the ſolidity of this opinion; but I will only aſk, admitting the adminiſtration were diſpoſed to turn the purſuits of the people of this country from the Ocean to the land, whether there is a power in the government, or whether there would be if we were as ſtrong as the government of Turkey, or even of France, to accompliſh the object? With a ſea coaſt of 1700 miles, with innumerable harbours and inlets, with a people enterpriſing beyond example, is it poſſible to ſay, you will have no ſhips or ſailors,

nor merchants. The people of this country will never conſent to give up their navigation, and every adminiſtration will find themſelves conſtrained to provide means to protect their commerce.

In reſpect to the Algerines the late adminiſtrations were ſingularly unfortunate. They were obliged to fight or pay them. The true policy was to hold a purſe in one hand and a ſword in the other. This was the policy of the government. Every commercial nation in Europe was tributary to theſe petty barbarians. It was not eſteemed diſgraceful. It was an affair of calculation, and the adminiſtration, made the beſt bargain in their power. They have heretofore been ſcandalized for paying tribute to a pirate, and now they are criminated, for preparing a few frigates, to protect our citizens from ſlavery and chains. Sir, I believe on this and many other occaſions, if the finger of heaven had pointed out a courſe and the government had purſued it, yet, that they would not have eſcaped the cenſure and reproaches of their enemies.

We were told, that the diſturbances in Europe were made a pretext for augmenting the army and navy. I will not, Mr. Chairman, at preſent go into a detailed view of the events which compelled the government to put on the armour of defence, and to reſiſt by force the French aggreſſions. All the world know the efforts which were made to accompliſh an amicable adjuſtment of differences with that power. It is enough to ſtate, that ambaſſadors of peace were twice repelled from the ſhores of France with ignominy and contempt. It is enough to ſay, that it was not till after we had drunk the cup of humiliation to the dregs, that the national ſpirit was roufed to a manly reſolution, to depend only on their God and their own courage for their protection. What, ſir, did it grieve the gentleman, that we did not crouch under the rod of the Mighty Nation, and like the petty powers of Europe, tamely ſurrender our independence? Would he have had the people of the United States relinquiſh without a ſtruggle thoſe liberties which had coſt ſo much blood and treaſure? We had not, ſir, recourſe to arms, till the mouths of our rivers were choaked with French corſairs. 'Till our ſhores, and every harbour, were inſulted and violated. 'Till half our commercial capital had been ſeized and no ſafety exiſted for the remainder but the protection of force. At this moment a noble enthuſiaſm electrized the country—the national pulſe beat high, and we were prepared to ſubmit to every ſacrifice, determined only, that our independence ſhould be the laſt. At that time an American was a proud name in Europe; but I fear, much I fear, that in the courſe we are now likely to purſue, the time will ſoon arrive, when our citizens abroad will be aſhamed to acknowledge their country.

The meaſures of '98 grew out of the public feelings. They were loudly demanded by the public voice. It was the people who drove the government to arms, and not as the gentleman expreſſed it, the government which puſhed the people to the X. Y. Z. of their political deſigns before they underſtood the A. B. C. of their political principles.

But what, ſir, did the gentleman mean by his X. Y. Z. I muſt look for ſomething very ſignificant, ſomething more than a quaintneſs of expreſſion, or a play upon words, in what falls from a gentleman of his learning and ability. Did he mean that the diſpatches which contained thoſe letters were impoſtures deſigned to deceive and miſlead the people of America. Intended to rouſe a falſe ſpirit not juſtified by events.—Though the gentleman had no reſpect for ſome of the characters of that embaſſy; though he felt no reſpect for the Chief Juſtice or the gentleman appointed from South Carolina, two characters as pure, as honorable and exalted, as any the country can boaſt of, yet, I ſhould have expected that he would have felt ſome tenderneſs for Mr. Gerry, in whom his party had ſince given proofs of undiminiſhed confidence. Does the gentleman believe that Mr. Gerry would have joined in the deception, and aſſiſted in fabricating a tale which was to blind his countrymen and to enable the government to deſtroy their liberties? Sir, I will not avail myſelf of the equivocations or confeſſions of Talleyrand himſelf; I ſay theſe gentlemen will not dare publicly to deny what is atteſted by the hand and ſeal of Mr. Gerry.

The truth of theſe diſpatches admitted, what was your government to do? Give us ſay the Directory, 1,200,000 livres for our own purſe, and purchaſe fifteen millions of dollars of Dutch debt, (which was worth nothing) and we will receive your miniſters and negociate for peace.

It was only left to the government to chuſe between an unconditional ſurrender of the honor and independence of the country, or a manly reſiſtance. Can you blame, ſir, the adminiſtration for a line of conduct, which has reflected on the nation ſo much honor, and to which under God, it owes its preſent proſperity.

Theſe are the events of the general government, which the gentleman has reviewed in ſucceſſion, and endeavoured to render odious or ſuſpicious. For all this I could have forgiven him, but there is one thing for which I will not, I cannot forgive him. I mean his attempt to diſturb the aſhes of the dead—to diſturb the aſhes of the great and good Waſhington. Sir, I might degrade by attempting to eulogize this illuſtrious character. The work is infinitely beyond my powers. I will only ſay that as long as exalted talents and virtues confer honor among men, the name of Waſhington will be held in veneration.

After, Mr. Chairman, the honorable member had exhauſted one quiver of arrows againſt the late executive, he opened another equally poiſoned, againſt the judiciary. He has told us, ſir, that when the power of the government was rapidly paſſing from federal hands, after we had heard the thundering voice of the people which diſmiſſed us from their ſervice, we erected a judiciary, which we expected would afford us the ſhelter of an inviolable ſanctuary. The gentleman is deceived. We knew better, ſir, the characters who were to ſucceed us, and we knew that nothing was ſacred in the eyes of infidels. No, ſir, I never had a thought that any thing belong-

ing to the federal government was holy in the eyes of thoſe gentlemen. I could never therefore imagine that a ſanctuary could be built up which would not be violated. I believe theſe gentlemen regard public opinion becauſe their power depends upon it, but I believe they reſpect no exiſting eſtabliſhment of the government, and if public opinion could be brought to ſupport them, I have no doubt they would annihilate the whole. I ſhall at preſent only ſay farther on this head, that we thought the re-organization of the judicial ſyſtem an uſeful meaſure, and we conſidered it as a duty to employ the remnant of our power to the beſt advantage of the country.

The honorable gentleman expreſſed his joy that the conſtitution had at laſt become ſacred in our eyes—that we formerly held that it meant every thing or nothing. I believe, ſir, that the conſtitution formerly appeared different in our eyes from what it now appears in the eyes of the dominant party. We formerly ſaw in it the principles of a fair and goodly creation? We looked upon it as a ſource of peace, of ſafety, of honor and of proſperity to the country. But now the view is changed; it is the inſtrument of wild and dark deſtruction. It is a weapon which is to proſtrate every eſtabliſhment, to which the nation owes the unexampled bleſſings which it enjoys.

The preſent ſtate of the country is an unanſwerable commentary upon our conſtruction of the conſtitution. It is true that we made it mean much, and I hope, ſir, we ſhall not be taught by the preſent adminiſtration that it can mean even worſe than nothing.

The gentleman has not confined his animadverſions to the individual eſtabliſhment, but has gone ſo far as to make the judges the ſubject of perſonal invective. They have been charged with having tranſgreſſed the bounds of judicial duty, and become the apoſtles of a political ſect. We have heard of their travelling about the country for little other purpoſe than to preach the federal doctrines to the people.

Sir, I think a judge ſhould never be a partizan. No man would be more ready to condemn a judge who carried his political prejudices or antipathies on the bench. But I have ſtill to learn that ſuch a charge can be ſuſtained againſt the judges of the United States.

The conſtitution is the ſupreme law of the land, and they have taken pains in their charges to grand juries to unfold and explain its principles. Upon ſimilar occaſions, they have enumerated the laws which compoſe our criminal code, and when ſome of thoſe laws have been denounced by the enemies of the adminiſtration as unconſtitutional, the judges may have felt themſelves called upon to expreſs their judgments upon that point and the reaſons of their opinions.

So far, but no farther, I believe the judges have gone; in going thus far they have done nothing more than faithfully diſcharge their duty.

But if, ſir, they have offended againſt the conſtitution or laws of the country, why are they not impeached? The gentleman now holds the ſword of juſtice; the judges are not a privileged order, they have no ſhelter but their innocence.

But in any view are the ſins of the former judges to be faſtened upon the new judicial ſyſtem? Would you annihilate a ſyſtem, becauſe ſome men under part of it had acted wrong. The conſtitution has pointed out a mode of puniſhing and removing the men, and does not leave this miſerable pretext for the wanton exerciſe of powers which is now contemplated.

The honourable member has thought himſelf juſtified in making a charge of a ſerious and frightful nature againſt the judges. They have been repreſented going about ſearching out victims of the ſedition law. But no fact has been ſtated; no proof has been adduced, and the gentleman muſt excuſe me for refuſing my belief to the charge till it is ſuſtained by ſtronger and better ground than aſſertion.

If, however, Mr. Chairman, the eyes of the gentleman are delighted with victims, if objects of miſery are grateful to his feelings, let me turn his view from the walks of the judges to the track of the preſent executive. It is in this path we ſee the real victims of ſtern, uncharitable, unrelenting power. It is here, ſir, we ſee the ſoldier who fought the battles of the revolution; who ſpilt his blood and waſted his ſtrength to eſtabliſh the independence of his country, deprived of the reward of his ſervices, and left to pine in penury and wretchedneſs. It is along this path that you may ſee helpleſs children crying for bread, and grey hairs ſinking in ſorrow to the grave! It is here that no innocence, no merit, no truth, no ſervices can ſave the unhappy ſectary, who does not believe in the creed of thoſe in power. I have been forced upon this ſubject, and before I leave it, allow me to remark, that without enquiring into the right of the Preſident to make vacancies in office, during the receſs of the Senate, but admitting the power to exiſt, yet that it never was given by the conſtitution to enable the Chief Magiſtrate to puniſh the inſults, to revenge the wrongs, or to indulge the antipathies of the man.—If the diſcretion exiſts, I have no heſitation in ſaying that it is abuſed when exerciſed from any other motive than the public good. And when I ſee the will of a Preſident precipitating from office, men of probity, knowledge, and talents, againſt whom the community has no complaint, I conſider it as a wanton and dangerous abuſe of power. And when I ſee men who have been the victims of this abuſe of power, I view them as the proper objects of national ſympathy and commiſeration.

Among the cauſes of impeachment againſt the judges, is their attempt to force the ſovereignties of the ſtates to bow before them. We have heard them called an ambitious body politic; and the fact I allude to, has been conſidered as full proof of the inordinate ambition of the body.

Allow me to ſay, ſir, the gentleman knows too much not to know that the judges are not a body politic. He ſuppoſed, perhaps there was an odium attached to the appellation, which it might ſerve his purpoſes to connect with the judges. But, ſir, how do you derive any evidence of the ambition of the judges from their deciſion that the ſtates under our federal compact were compellable to do juſtice?

Can it be ſhewn or even ſaid that the judgment of the court was a falſe conſtruction of the conſtitution? The policy of later times on this point has altered the conſtitution, and in my opinion has obliterated its faireſt feature. I am taught by my principles that no power ought to be ſuperior to juſtice. It is not that I wiſh to ſee the ſtates humbled in duſt and aſhes; it is not that I wiſh to ſee the pride of any man flattered by their degradation; but it is that I wiſh to ſee the great and the ſmall, the ſovereign and the ſubject bow at the altar of juſtice, and ſubmit to thoſe obligations from which the Deity himſelf is not exempt. What was the effect of this proviſion in the conſtitution? It prevented the ſtates being the judges in their own cauſe, and deprived them of the power of denying juſtice. Is there a principle of ethics more clear than that a man ought not to be a judge in his own cauſe, and is not the principle equally ſtrong when not applied to one man, but to a collective body? It was the happineſs of our ſituation which enabled us to force the greateſt ſtate to ſubmit to the yoke of juſtice, and it would have been the glory of the country in the remoteſt times, if the principle in the conſtitution had been maintained.—What had the ſtates to dread? Could they fear injuſtice when oppoſed to a feeble individual? Has a great man reaſon to fear from a poor one? And could a potent ſtate be alarmed by the unfounded claim of a ſingle perſon? For my part I have always tho't that an independent tribunal ought to be provided to judge on the claims againſt this government. The power ought not to be in our own hands. We are not impartial, and are therefore liable without our knowledge to do wrong. I never could ſee why the whole community ſhould not be bound by as ſtrong an obligation to do juſtice to an individual, as one man is bound to do it to another.

In England the ſubject has a better chance for juſtice againſt the ſovereign than in this country a citizen has againſt a ſtate. The crown is never its own arbiter, and they who ſit in judgment have no intereſt in the event of their deciſion.

The judges, ſir, have been criminated for their conduct in relation to the ſedition act, and have been charged with ſearching for victims who were ſacrificed under it. The charge is eaſily made, but has the gentleman the means of ſupporting it? It was the evident deſign of the gentleman to attach the odium of the ſedition law to the judiciary; on this ſcore the judges are ſurely innocent.—They did not paſs the act; the legiſlature made the law, and they were obliged by their oaths to execute it. The judges decided the law to be conſtitutional, and I am not now going to agitate the queſtion. I did hope when the law paſſed, that its effect would be uſeful. It did not touch the freedom of ſpeech, and was deſigned only to reſtrain the enormous abuſes of the preſs. It went no farther than to puniſh malicious falſhoods publiſhed with the wicked intention of deſtroying the government.—No innocent man ever did or could have ſuffered under the law. No puniſhment could be inflicted till a jury was ſatisfied that a publication was falſe, and that the party charged knowing it to be falſe had publiſhed it with an evil deſign.

The miſconduct of the judges, however on this ſubject has been conſidered by the gentleman the more aggravated, by an attempt to extend the principles of the ſedition act, by an adoption of thoſe of the common law. Connected with this ſubject, ſuch an attempt was never made by the judges. They have held generally, that the conſtitution of the United States, was predicated upon an exiſting common law Of the ſoundneſs of that opinion, I never had a doubt. I ſhould ſcarcely go too far, were I to ſay, that ſtript of the common law, there would be neither conſtitution nor government. The conſtitution is unintelligible without reference to the common law. And were we to go into our courts of juſtice with the mere ſtatutes of the United States, not a ſtep could be taken, not even a contempt could be puniſhed. Thoſe ſtatutes preſcribe no forms of pleadings, they contain no principles of evidence. they furniſh no rule of property. If the common law does not exiſt in moſt caſes there is no law, but the will of the judge.

I have never contended, that the whole of the common law attached to the conſtitution, but only ſuch parts as were conſonant to the nature and ſpirit of our government. We have nothing to do with the law of the Eccleſiaſtical eſtabliſhment, nor with any principle of monarchical tendency. What belongs to us, and what is unſuitable, is a queſtion for the ſound diſcretion of the judges. The principle is analogous to one which is found in the writings of all juriſts, and commentators. When a colony is planted, it is eſtabliſhed ſubject to ſuch parts of the law of the mother country, as are applicable to its ſituation. When our forefathers colonized the wilderneſsof America, they brought with them the common law of England. They claimed it as their birth right, and they left it as the moſt valuable inheritance to their children. Let me ſay, that this ſame common law, now ſo much deſpiſed and vilified, is the cradle of the rights and liberties which we now enjoy. It is to the common law we owe our diſtinction from the coloniſts of France, of Portugal and of Spain. How long is it ſince we have diſcovered the malignant qualities which are now aſcribed to this law ? Is there a ſtate in the Union which has not adopted it, and in which it is not in force ? Why is it refuſed to the federal conſtitution ? Upon the ſame principle, that every power is denied which tends to invigorate the government. Without this law, the conſtitution becomes, what perhaps many gentlemen wiſh to ſee it, a dead letter.

For ten years it has been the doctrines of our courts. that the common law was in force, and yet can gentlemen ſay, that there has been a victim who has ſuffered under it. Many have experienced its protection, none can complain of its oppreſſion.

In order to demonſtrate the aſpiring ambition of this body politic, the judiciary, the hon. gentleman ſtated with much emphaſis and feeling, that the judges had been hardy enough to ſend their mandate into the executive cabinet. Was the gentleman, ſir, acquainted with the fact when he made this ſtatement. It differs eſſentially

from what I know I have heard upon the ſubject. I ſhall be allowed to ſtate the fact.

Several commiſſions had been made out by the late adminiſtration, for juſtices of the peace of this territory. The commiſſions were complete—they were ſigned and ſealed, and left with the clerks of the office of State, to be handed to the perſons appointed. The new adminiſtration found them on the clerk's table, and thought proper to withhold them. Theſe offices are not dependent on the will of the Preſident. The perſons named in the commiſſions, conſidered that their appointments were complete, and that the detention of their commiſſions was a wrong, and not juſtified by the legitimate authority of the Executive. They applied to the ſupreme court, for a rule upon the ſecretary of State, to ſhew cauſe why a mandamus ſhould not iſſue, commanding him to deliver up the commiſſions. Let me aſk, ſir, what could the judges do? The rule to ſhew cauſe was a matter of courſe upon a new point in the leaſt doubtful. To have denied it, would have been to ſhut the doors of juſtice againſt the parties. It concludes nothing, neither the juriſdiction nor the regularity of the act. The judges did their duty. They gave an honorable proof of their independence. They liſtened to the complaint of an individual againſt your Preſident, and have ſhewn themſelves diſpoſed to grant redreſs againſt the greateſt man in the government; if a wrong has been committed and the conſtitution authoriſes their interference, will gentlemen ſay, that the ſecretary of State, or even the Preſident is not ſubject to law? And if they violate the law, where can we apply for redreſs but to our courts of juſtice. But, ſir, it is not true, that the judges iſſued their mandate to the Executive; they have only called upon the ſecretary of State to ſhew them, that what he has done is right. It is but an incipient proceeding which decides nothing.

Mr. Giles roſe to explain. He ſaid, that the gentleman from Delaware had aſcribed to him many things which he did not ſay, and had afterwards undertaken to refute them. He had only ſaid, that mandatory proceſs had iſſued; that the courſe purſued by the court indicated a belief by them, that they had juriſdiction, and that in the event of no cauſe being ſhewn a mandamus would iſſue.

Mr. Bayard—I ſtated the gentleman's words as I took them down. It is immaterial whether the miſtake was in the gentleman's expreſſion, or in my underſtanding. He has a right to explain, and I will take his poſition as he now ſtates it. I deny, ſir, that mandatory proceſs has iſſued. Such proceſs would be imperative, and ſuppoſe a juriſdiction to exiſt; the proceeding, which has taken place, is no more than notice of the application for juſtice made to the court, and allows the party to ſhew, either that no wrong has been committed, or that the court has no juriſdiction over the ſubject. Even, ſir, if the rule were made abſolute, and the mandamus iſſued, it would not be definitive, but it would be competent for the ſecretary in a return to the writ, to juſtify the act which has been done, or to ſhew that it is not a ſubject of judicial cognizance.

It is not till after an insufficient return that a peremptory mandamus issues. In this transaction, so far from seeing any thing culpable in the conduct of your judges, I think, sir, that they have given a strong proof of the value of that constitutional provision which makes them independent. They are not terrified by the frowns of executive power, and dare to judge between the rights of a citizen and the pretensions of a President.

I believe, Mr. Chairman, I have gone through most of the preliminary remarks which the honorable gentleman thought proper to make before he proceeded to the consideration of those points which properly belong to the subject before the committee. I have not supposed the topics I have been discussing had any connection with the bill on your table; but I felt it as a duty not to leave unanswered charges against the former administrations and our judges, of the most insidious tendency, which I know to be unfounded, and which were calculated and designed to influence the decision on the measure now proposed. Why, Mr. Chairman, has the present subject been combined with the army, the navy, the internal taxes, and the sedition law? Was it to involve them in one common odium, and to consign them to a common fate? Do I see in the preliminary remarks of the honorable member the title page of the volume of measures which are to be pursued? Are gentlemen sensible of the extent to which it is designed to lead them? They are now called on to reduce the army, to diminish the navy, to abolish the mint, to destroy the independence of the judiciary, and will they be able to stop when they are next required to blot out the public debt, that hateful source of monied interest and of aristocratic influence? Be assured, Sir, we see but a small part of the system which has been formed. Gentlemen know the advantage of progressive proceedings, and my life for it, if they can carry the people with them, their career will not be arrested while a trace remains of what was done by the former administrations.

There was another remark of the honorable member which I must be allowed to notice. The pulpit, sir, has not escaped invective. The ministers of the gospel have been represented, like the judges, forgetting the duties of their calling, and employed in disseminating the heresies of federalism. Am I then, sir, to understand that religion is also denounced, and that your churches are to be shut up? Are we to be deprived, sir, both of law and gospel? Where do the principles of the gentleman end? When the system of reform is completed, what will remain? I pray God that this flourishing country, which, under his providence, has attained such a height of prosperity, may yet escape the desolation suffered by another nation, by the practice of similar doctrines.

I beg pardon of the committee for having consumed so much time upon points little connected with the subject of the debate. Till I heard the honorable member from Virginia yesterday, I was prepared only to discuss the merits of the bill upon which you are called to vote. His preliminary remarks were designed to have an effect which I deemed it material to endeavour to counteract, and I there-

fore yielded to the neceſſity of purſuing the courſe he had taken, though I was conſcious of departing very far from the ſubject before the committee. To the diſcuſſion of that ſubject I now return with great ſatisfaction, and ſhall conſider it under the two views it naurally preſents; the conſtitutionality and the expediency of the meaſure. I find it moſt convenient to conſider firſt, the queſtion of expediency, and ſhall therefore beg permiſſion to invert the natural order of the inquiry.

To ſhew the inexpediency of the preſent bill I ſhall endeavor to prove the expediency of the judicial law of the laſt ſeſſion.—In doing this it will be neceſſary to take a view of the leading features of the pre-exiſting ſyſtem, to inquire into its defects, and to examine how far the evils complained of were remedied by the proviſions of the late act. It is not my intention to enter into the details of the former ſyſtem; it can be neceſſary only to ſtate ſo much as will diſtinctly ſhew its defects.

There exiſted, ſir, a ſupreme court, having original cognizance in a few caſes, but principally a court of appellate juriſdiction. This was the great national court of dernier reſort. Before this tribunal queſtions of unlimited magnitude and conſequence both of a civil and political nature received their final deciſion; and I may be allowed to call it the national crucible of juſtice, in which the judgments of inferior courts were to be reduced to their elements and cleanſed from every impurity. There was a circuit court, compoſed in each diſtrict of a judge of the ſupreme court and the diſtrict judge. This was the chief court of buſineſs both of a civil and criminal nature.

In each diſtrict a court was eſtabliſhed for affairs of revenue and of admiralty and maritime juriſdiction.—It is not neceſſary for the purpoſes of the preſent argument to give a more extenſive outline of the former plan of the judiciary. We diſcover that the judges of the ſupreme court in conſequence of their compoſing a part of the circuit courts, were obliged to travel from one extremity to the other of this extenſive country. In order to be in the court houſe two months in the year they were forced to be upon the road ſix. The ſupreme court being the court of laſt reſort, having final juriſdiction over queſtions of incalculable importance, ought certainly to be filled with men not only of probity, but of great talents, learning, patience and experience. The union of theſe qualities is rarely, very rarely found in men who have not paſſed the meridian of life. My Lord Coke tells us no man is fit to be a judge till he has numbered the lucubrations of twenty years. Men of ſtudious habits are ſeldom men of ſtrong bodies. In the courſe of things it could not be expected that men fit to be judges of your ſupreme courts would be men capable of traverſing the mountains and wilderneſſes of this extenſive country. It was an eſſential and great defect in this court, that it required in men the combination of qualities, which it is a phenomenon to find united. It required that they ſhould poſſeſs the learning and experience of years and the ſtrength and activity of youth. I may ſay further,

Mr. Chairman, that this court, from its conſtitution tended to deterioration and not to improvement.—Your judges, inſtead of being in their cloſets and increaſing by reflection and ſtudy their ſtock of wiſdom and knowledge, had not even the means of repairing the ordinary waſte of time. Inſtead of becoming more learned and more capable, they would gradually loſe the fruits of their former induſtry. Let me aſk if this was not a vicious conſtruction of a court of the higheſt authority and greateſt importance in the nation. In a court from which no one had an appeal and to whom it belonged to eſtabliſh the leading principles of national juriſprudence.

In the conſtitution of this court as a court of laſt reſort, there was another eſſential defect. The appeals to this court are from the circuit courts. The circuit court conſiſts of the diſtrict judge and a judge of the ſupreme court. In caſes where the diſtrict judge is intereſted, where he has been counſel, and where he has decided in the court below, the judge of the ſupreme court alone compoſes the circuit court. What then is ſubſtantially the nature of this appellate juriſdiction? In truth and practice the appeal is from a member of a court to the body of the ſame court. The circuit courts are but emanations of the ſupreme court. Caſt your eyes on the ſupreme court; you ſee it diſappear, and its members afterwards ariſing in the ſhape of circuit judges. Behold the circuit judges; they vaniſh and immediately you perceive the form of the ſupreme court appearing. There is, ſir, a magic in this arrangement which is not friendly to juſtice. When the ſupreme court aſſembles, appeals come from the various circuits of the United States. There are appeals from the deciſions of each judge. The judgments of each member paſs in ſucceſſion under the reviſion of the whole body. Will not a judge while he is examining the ſentence of a brother to-day, remember that that brother will ſit in judgment upon his proceedings to-morrow. Are the members of a court thus conſtituted, free from all motive, exempt from all bias which could even remotely influence opinion on the point of ſtrict right; and yet let me aſk emphatically, whether this court, being the court of final reſort, ſhould not be ſo conſtituted, that the world ſhould believe and every ſuitor be ſatisfied, that in weighing the juſtice of a cauſe, nothing entered the ſcales but its true merits.

Your ſupreme court, ſir, I have never conſidered as any thing more than the judges of aſſize ſitting in bank. It is a ſyſtem with which perhaps I ſhould find no fault, if the judges ſitting in bank did not exerciſe a final juriſdiction. Political inſtitutions ſhould be ſo calculated as not to depend upon the virtues, but to guard againſt the vices and weakneſſes of men. It is poſſible that a judge of the ſupreme court, would not be influenced by the eſprit du corps, that he would neither be gratified by the affirmance nor mortified by the reverſal of his opinions; but this, ſir, is eſtimating the ſtrength and purity of human nature upon a poſſible but not on its ordinary ſcale.

I believe, Mr. Chairman, that in practice, the formation of the

ſupreme court fruſtrated in a great degree the deſign of its inſtitution. I believe that many ſuitors were diſcouraged from ſeeking a reviſion of the opinions of the circuit court by a deep impreſſion of the difficulties to be ſurmounted in obtaining the reverſal of the judgment of a court from the brethren of the judge who pronounced the judgment. The benefit of a court of appeals well conſtituted is not confined to the mere act of reviewing the ſentence of an inferior court, but is more extenſively uſeful by the general operation of the knowledge of its exiſtence upon inferior courts. The power of uncontrolable deciſion is of the moſt delicate and dangerous nature. When exerciſed in the courts it is more formidable than by any other branch of our government. It is the judiciary only which can reach the perſon, the property, or life of an individual. The exerciſe of their power is ſcattered over ſeparate caſes, and creates no common cauſe. The great ſafety under this power ariſes from the right of appeal. A ſenſe of this right combines the reputation of the judge with the juſtice of the cauſe. In my opinion it is a ſtrong proof of the wiſdom of a judicial ſyſtem when few cauſes are carried into the court of the laſt reſort. I would ſay, if it were not parodoxical, that the very exiſtence of a court of appeals ought to deſtroy the occaſion for it. The conſcience of the judge, ſir, will no doubt be a great check upon him in the unbounded field of diſcretion created by the uncertainty of law, but I ſhould in general caſes more rely upon the effect produced by his knowledge, that an inadvertent or deſigned abuſe of power was liable to be corrected by a ſuperior tribunal. A court of appellate juriſdiction organized upon ſound principles ſhould exiſt, though few cauſes aroſe for their deciſion; for it is ſurely better to have a court and no cauſes, than to have cauſes and no court. I now proceed, ſir, to conſider the defects which are plainly diſcernable, or which have been diſcovered by practice in the conſtitution of the circuit courts.

Theſe courts from information which I have received, I apprehend were originally conſtructed upon a fallacious principle. I have heard it ſtated that the deſign of placing the judges of the ſupreme court in the circuit courts, was to eſtabliſh uniform rules of deciſion throughout the United States. It was ſuppoſed, that the preſiding judges of the circuit courts proceeding from the ſame body would tend to identify the principles and rules of deciſion in the ſeveral diſtricts. In practice a contrary effect has been diſcovered to be produced by the peculiar organization of theſe courts. In practice we have found not only a want of uniformity of rule between the different diſtricts—but no uniformity of rule in the ſame diſtrict. No doubt there was an uniformity in the deciſions of the ſame judge, but as the ſame judge ſeldom ſat twice ſucceſſively in the ſame diſtrict, and ſometimes not till after an interval of two or three years, his opinions were forgotten or reverſed before he returned. The judges were not educated in the ſame ſchool. The practice of the courts, the forms of proceeding as well as the rules of property, are extremely various in the different quarters of the United States. The lawyers of the eaſtern, the

middle and Southern States are ſcarcely profeſſors of the ſame ſcience. Theſe courts were in a ſtate of perpetual fluctuation. The ſucceſſive terms gave you courts in the ſame diſtrict, as different from each other as thoſe of Connecticut and Virginia. No ſyſtem of practice could grow up, no certainty of rule could be eſtabliſhed. The ſeeds ſown in one term ſcarcely vegetated before they were trodden under foot. The condition of a ſuitor was terrible—the ground was always trembling under his feet. The opinion of a former judge was no precedent to his ſucceſſor. Each conſidered himſelf bound to follow the light of his own underſtanding. To exemplify theſe remarks I will take the liberty of ſtating a caſe which came under my own obſervation. An application before one judge was made to quaſh an attachment in favor of a ſubſequent execution creditor—the application was reſiſted upon two grounds, and the learned judge, to whom the application was firſt made, expreſſing his opinion in ſupport of both grounds, diſmiſſed the motion. At the ſucceeding court a different judge preſided, and the application was renewed and anſwered upon the ſame grounds. The ſecond learned judge was of opinion, that one point had no validity, but he conſidered the other ſuſtainable, and was about alſo to diſmiſs the motion, but upon being preſſed at laſt conſented to grant a rule to ſhew cauſe. At the third term, a third learned judge was on the bench, and though the caſe was argued upon its former principles, he was of opinion, that both anſwers to the application were clearly inſufficient, and accordingly quaſhed the attachment. When the opinions of his predeceſſors were cited, he replied, that every man was to be ſaved by his own faith. Upon the opinion of one judge, a ſuitor would ſet out in a long courſe of proceedings and after loſing much time and waſting much money he would be met by another judge, who would tell him he had miſtaken his road, that he muſt return to the place from which he ſtarted, and purſue a different track. Thus it happened as to the chancery proceſs to compel the appearance of a defendant. Some of the judges conſidered themſelves bound by the rules in the Engliſh books, while others conceived that a power belonged to the court upon the ſervice of a ſubpœna to make a ſhort rule for the defendant to appear and anſwer or that the bill ſhould be taken pro confeſſo. A caſe of this kind occurred, where much embarraſſment was experienced. In the circuit court for the diſtrict of Pennſylvania a bill in chancery was filed againſt a perſon, who then happened to be in that diſtrict, but whoſe place of reſidence was in the North-Weſtern territory. The ſubpœna was ſerved, but there was no anſwer nor appearance. The court to which the writ was returned, without difficulty, upon an application, granted a rule for the party to appear and anſwer at the expiration of a limited time, or that the bill be taken pro confeſſo. A perſonal ſervice of this rule being neceſſary, the complainant was obliged to hire a meſſenger to travel more than a thouſand miles to ſerve a copy of the rule. At the enſuing court, affidavit was made of the ſervice and a motion to make the rule abſo-

lute. The ſcene immediately changed, a new judge preſided, and it was no longer the ſame court.

The authority was called for, to grant ſuch a rule; was it warranted by any act of Congreſs, or by the practice of the ſtate? It was anſwered there is no act of Congreſs, the ſtate has no court of Chancery: But this proceeding was inſtituted and has been brought to its preſent ſtage, at conſiderable expence, under the direction of this court. The judge knew of no power the court had to direct the proceeding, and he did not conſider that the complainant could have a decree upon his bill without going through the long train of proceſs found in the books of Chancery practice. The complainant took this courſe, and at a future time was told by another judge, that he was incurring an unneceſſary loſs of time and money, and that a common rule would anſwer his purpoſe. I aſk you, Mr. Chairman, if any ſyſtem could be deviſed more likely to produce vexation and delay. Surely, ſir, the law is uncertain enough in itſelf, and its paths ſufficiently intricate and tedious, not to require that your ſuitors ſhould be burthened with additional embarraſsments by the organization of your courts.

The circuit is the principal court of civil and criminal buſineſs; the defects of this court were therefore moſt generally and ſenſibly felt. The high characters of the judges at firſt brought ſuitors into the courts, but the buſineſs was gradually declining, though cauſes belonging to the juriſdiction of the courts were multiplying, the continual oſcillation of the court baffled all conjecture as to the correct courſe of the proceeding or the event of a cauſe. The law ceaſed to be a ſcience. To adviſe your client it was leſs important to be ſkilled in the books than to be acquainted with the character of the judge who was to preſide. When the term approached, the enquiry was, what judge are we to have? What is his character as a lawyer? Is he acquainted with chancery law? is he a ſtrict common lawyer, or a ſpecial pleader?

When the character of the judge was aſcertained; gentlemen would then, conſidering the nature of their cauſes, determine whether it was more adviſable to uſe means to poſtpone or to bring them to a hearing.

The talents of the judges rather encreaſed the evil, than afforded a corrective for the vicious conſtitution of theſe courts. They had not drawn their knowledge from the ſame ſources: Their ſyſtems were different, and hence the character of the court more eſſentially changed at each ſucceſſive term. Theſe difficulties and embarraſſments baniſhed ſuitors from the court, and without more than a common motive, recourſe was ſeldom had to the federal tribunals.

I have ever conſidered it alſo, as a defect in this court, that it was compoſed of judges of the higheſt and loweſt grades. This, ſir, was an unnatural aſſociation; the members of the court ſtood on ground too unequal to allow the firm aſſertion of his opinion to the diſtrict judge. Inſtead of being elevated, he felt himſelf degraded by a ſeat upon the bench of this court. In the diſtrict court he was every

thing, in the circuit court he was nothing. Sometimes he was obliged to leave his ſeat, while his aſſociate reviewed the judgment which he had given in the court below. In all caſes he was ſenſible that the ſentences in the court in which he was, were ſubject to the reviſion and control of a ſuperior juriſdiction, where he had no influence, but the authority of which was ſhared by the judge with whom he was acting. No doubt in ſome inſtances the diſtrict judge was an efficient member of this court, but this never aroſe from the nature of the ſyſtem, but from the perſonal character of the man. I have yet, Mr. Chairman, another fault to find with the ancient eſtabliſhment of the circuit courts. They conſiſted only of two judges, and ſometimes of one. The number was too ſmall, conſidering the extent and the importance of the juriſdiction of the court. Will you remember, ſir, that they hold the power of life and death without appeal. That their judgments were final over ſums of 2000 dollars, and their original juriſdiction reſtrained by no limits of value, and that this was the court to which appeals were carried from the diſtrict court.

I have often heard, ſir, that in a multitude of council, there was wiſdom, and if the converſe of the maxim be equally true, this court muſt have been very deficient. When we ſaw a ſingle judge reverſing the judgment of the diſtrict court, the objection was moſt ſtriking, but the court never had the weight which it ought to have poſſeſſed and would have enjoyed had it been compoſed of more members.

But two judges belonging to the court an inconvenience was ſometimes felt from a diviſion of their opinions. And this inconvenience was but poorly obviated by the proviſion of the law that in ſuch caſes, the cauſe ſhould be continued to the ſucceeding term, and receive its deciſion from the opinion of the judge who ſhould then preſide.

I do not pretend, Mr. Chairman, to have enumerated all the defects, which belonged to the former judicial ſyſtem. But I truſt thoſe which I have pointed out, in the minds of candid men, will juſtify the attempt of the legiſlature to reviſe that ſyſtem, and to make a fairer experiment of that part of the plan of our conſtitution which regards the judicial power. The defects, ſir, to which I have alluded, had been a long time felt and often ſpoken of. Remedies had frequently been propoſed. I have known the ſubject brought forward in Congreſs or agitated in private, ever ſince I have had the honor of a ſeat upon this floor. I believe, ſir, a great and juſt deference for the author of the ancient ſcheme, prevented any innovation upon its material principles, there was no gentleman who felt that deference more than myſelf, nor ſhould I have ever hazarded a change upon ſpeculative opinion. But practice had diſcovered defects which might well eſcape the moſt diſcerning mind in planning the theory. The original ſyſtem could not be more than experiment; it was built upon no experience. It was the firſt application of principles to a new ſtate of things. The firſt judicial law diſplays great ability, and it is no diſparagement of the author, to ſay its plan is not perfect.

I know, ſir, that ſome have ſaid, and perhaps not a few have believed, that the new ſyſtem was introduced not ſo much with a view to its improvement of the old, as to the places which it provided for the friends of the adminiſtration. This is a calumny ſo notoriouſly falſe, and ſo humble as not to require nor deſerve an anſwer upon this floor. It cannot be ſuppoſed that the paltry object of providing for ſixteen unknown men could have ever offered an inducement to a great party, baſely to violate their duty; meanly to ſacrifice their character; and fooliſhly to forego all future hopes.

I now come, Mr. Chairman, to examine the changes which were made by the late law. This ſubject has not been correctly underſtood. It has every where been erroneouſly repreſented. I have heard much ſaid about the additional courts created by the act of laſt ſeſſion. I perceive them ſpoken of in the Preſident's meſſage. In the face of this high authority I undertake to ſtate, that no additional court was eſtabliſhed by that law.

Under the former ſyſtem there was one Supreme Court, and there is but one now. There were ſeventeen diſtrict courts, and there are no more now. There was a circuit court held in each diſtrict, and ſuch is the caſe at preſent. Some of the diſtrict judges are directed to hold their courts at new places, but there is ſtill in each diſtrict but one diſtrict court. What, ſir, has been done? The unnatural alliance between the ſupreme and diſtrict courts has been ſervered, but the juriſdiction of both thoſe courts remains untouched. The power or authority of neither of them has been augmented or diminiſhed. The juriſdiction of the circuit court has been extended to the cognizance of debts of 400 dollars, and this is the only material change in the power of that court. The chief operation of the late law is a new organization of the circuit courts. To avoid the evils of the former plan, it became neceſſary to create a new corps of judges. It was conſidered that the ſupreme court ought to be ſtationary and to have no connection with the judges over whoſe ſentences they had an appellate juriſdiction.

To have formed a circuit court out of the diſtrict judges, would have allowed no court of appeal from the diſtrict court, except the ſupreme court, which would have been attended with great inconvenience. But this ſcheme was oppoſed by a ſtill greater difficulty. In many diſtricts the duties of the judge require a daily attention. In all of them buſineſs of great importance may on unexpected occurrences require his preſence.

This plan was thought of; it was well examined and finally rejected, in conſequence of ſtrong objections to which it was liable. Nothing therefore remained, but to compoſe the circuit court of judges diſtinct from thoſe of the other courts. Admitting the propriety of excluding from this court the judges of the ſupreme and diſtrict courts, I think the late Congreſs cannot be accuſed of any wanton expence nor even of a neglect of economy in the new eſtabliſhment. This extenſive country has been divided into ſix circuits, and three judges appointed for each circuit. Moſt of the judges

have twice a year to attend a court in three ſtates, and there is not one of them who has not to travel farther, and who in time will not have more labour to perform, than any judge of the ſtate courts. When we call to mind, that the juriſdiction of this court reaches the life of the citizen, and that in civil caſes its judgments are final to a large amount; certainly it will not be ſaid that it ought to have been compoſed of leſs than three judges. One was ſurely enough, and if it had been doubtful whether two were not ſufficient, the inconvenience, which would have frequently ariſen from an equal diviſion of opinion, juſtifies the proviſion which ſecures a determination in all caſes.

It was additionally very material to place on the bench of this court, a judge from each ſtate, as the court was in general bound to conform to the law and the practice of the ſeveral ſtates.

I truſt, ſir, the committee are ſatisfied that the number of judges which compoſe the circuit court is not too great, and that the legiſlature would have been extremely culpable, to have committed the high powers of this court to fewer hands. Let me now aſk, if the compenſation allowed to theſe judges is extravagant. It is little more than half the allowance made to the judges of the ſupreme court. It is but a ſmall proportion of the ordinary practice of thoſe gentlemen of the bar, who are fit, and to whom we ought to look to fill the places.—You have given a ſalary of 2000 dollars. The puiſne judges of Pennſylvania, I believe, have more. When you deduct the expences of the office, you will leave but a moderate compenſation for ſervice, but a ſcanty proviſion for a family. When, Mr. Chairman, gentlemen coolly conſider the amendments of the late law, I flatter myſelf their candor will at leaſt admit that the preſent modification was fairly deſigned to meet and remedy the evils of the old ſyſtem.

The ſupreme court has been rendered ſtationary. Men of age, of learning, and of experience, are now capable *of holding* a ſeat on the bench; they have time to mature their opinions in cauſes on which they are called to decide, and they have leiſure to devote to their books, and to augment their ſtore of knowledge. It was our hope by the preſent eſtabliſhment of the court, to render it the future pride, and honor, and ſafety of the nation. It is this tribunal which muſt ſtamp abroad the judicial character of our country. It is here, that ambaſſadors and foreign agents, reſort for juſtice, and it belongs to this high court to decide finally, not only on controverſies of unlimited value between individuals, and on the more important colliſion of ſtate pretenſions, but alſo upon the validity of the laws of the ſtates, and of this government. Will it be contended that ſuch great truſts ought to be repoſed in feeble or incapable hands. It has been aſſerted that this court will not have buſineſs to employ it. The aſſertion is ſupported neither by what is paſt, nor by what is likely to happen. During the preſent ſeſſion of Congreſs at their laſt term the court was fully employed for two weeks in the daily hearing of cauſes. But its buſineſs muſt encreaſe. There is no longer that reſtraint upon

appeals from the circuit court, which was impoſed by the authority of the judge of the court to which the appeal was to be carried; no longer will the apprehenſion of a ſecret unavoidable bias in favor of the deciſion of a number of their own body, ſhake the confidence of a ſuitor, in reſorting to this court, who thinks that juſtice has not been done to him in the court below. The progreſſive encreaſe of the wealth und population of the country, will unavoidably ſwell the buſineſs of the court. But there is a more certain and unfailing ſource of employment, which will ariſe in the appeals from the courts of the national territory. From the courts of original cognizance in this territory, it affords the only appellate juriſdiction. If gentlemen will look to the ſtate of property, of a vaſt amount in this city, they muſt be ſatisfied that the ſupreme court will have enough to do for the money which is paid them.

Let us next conſider, ſir, the preſent ſtate of the circuit courts. There are ſix courts, which ſit in twenty-two diſtricts, each court viſits at leaſt three diſtricts; ſome four. The courts are now compoſed of three judges of equal power and dignity. Standing on equal ground their opinions will be independent and firm. Their number is the beſt for conſultation, and they are exempt from the inconvenience of an equal diviſion of opinion. But what I value moſt, and what was deſigned to remedy the great defect of the former ſyſtem, is the identity which the court maintains. Each diſtrict has now always the ſame court. Each diſtrict will hereafter have a ſyſtem of practice and uniformity of deciſion. The judges of each circuit will now ſtudy, and learn and retain the laws and practice of their reſpective diſtricts. It never was intended, nor is it practicable that the ſame rule of property or of proceeding ſhould prevail from N. Hampſhire to Georgia. The old courts were enjoined to obey the laws of the reſpective ſtates. Thoſe laws fluctuate with the will of the ſtate legiſlatures, and no other uniformity could ever be expected, but in the conſtruction of the conſtitution and ſtatutes of the United States. This uniformity is ſtill preſerved by the control of the ſupreme court over the courts of the circuits. Under the preſent eſtabliſhment, a rational ſyſtem of juriſprudence will ariſe. The practice and local laws of the different diſtricts may vary, but in the ſame diſtrict they will be uniform. The practice of each diſtrict will ſuggeſt improvements to the others, the progreſſive adoption of which will in time aſſimilate the ſyſtems of the ſeveral diſtricts.

It is unneſſary, Mr. Chairman, for me to ſay any thing in relation to the diſtrict courts. Their former juriſdiction was not varied by the law of the laſt ſeſſion.

It has been my endeavor, ſir, to give a correct idea of the defects of the former judicial plan, and of the remedies for thoſe defects introduced by the law now deſigned to be repealed. I do not pretend to ſay that the preſent ſyſtem is perfect, I contend only that it is better than the old. If, ſir, inſtead of deſtroying, gentlemen will undertake to improve the preſent plan, I will not only applaud their motives, but will aſſiſt in their labor. We aſk only that our ſyſtem

may be tried. Let the ſentence of experience be pronounced upon it. Let us hear the national voice after it has been felt. They will then be better able to judge its merits. In practice it has not yet been complained of; and as it is deſigned for the benefit of the people, how can their friends juſtify the act of taking it from them before they have manifeſted their diſpoſition to part with it?

How, ſir, am I to account for the extreme anxiety to get rid of this eſtabliſhment. Does it proceed from that ſpirit which ſince power has been given to it, has ſo unrelentingly perſecuted men in office who belonged to a certain ſect? I hope there will be a little patience; theſe judges are old and infirm men; they will die; they muſt die; wait but a ſhort time, their places will be vacant; they will be filled by the diſciples of the new ſchool, and gentlemen will not have to anſwer for the political murder which is now meditated.

I ſhall take the liberty now, ſir, of paying ſome attention to the objections which have been expreſſed againſt the late eſtabliſhment. An early exception which, in the courſe of the debate, has been abandoned by moſt gentlemen, and little relied on by any one, is the additional expence. The gentleman from Virginia ſtated the expence of the preſent eſtabliſhment at 137,000 dollars.—On this head the material queſtion is, not what is the expence of the whole eſtabliſhment, but what will be ſaved by the repealing law on the table. I do not eſtimate the ſaving at more than 28,500 dolls. You ſave nothing but the ſalaries of 16 judges of 2000 dollars each. From this amount is to be deducted the ſalary of a judge of the ſupreme court, which is 3,500 dollars. Aboliſhing the preſent ſyſtem will not vary the incidental expences of the circuit court. You revive a circuit court whoſe incidental expences will be equal to thoſe of the court you deſtroy. The encreaſed ſalaries of the diſtrict judges of Kentucky and Tenneſſee muſt remain. It is not propoſed to aboliſh their offices, and the admiſſions upon the other ſide allow that the ſalaries cannot be reduced.

If there were no other objection, the preſent bill could not paſs without amendment, becauſe it reduces the ſalaries of thoſe judges, which is a plain undeniable infraction of the conſtitution. But, ſir, it is not a fair way of treating the ſubject to ſpeak of the aggregate expence. The great enquiry is, whether the judges are neceſſary, and whether the ſalaries allowed to them are reaſonable? Admitting the utility of the judges, I think no gentleman will contend, that the compenſation is extravagant.

We are told of the expence attending the federal judiciary. Can gentlemen tell me of a government under which juſtice is more cheaply adminiſtered; add together the ſalaries of all your judges and the amount but little exceeds the emoluments of the Chancellor of England. Aſcertain the expences of ſtate juſtice, and the proportion of each ſtate of the expence of federal juſtice, and you will find that the former is five times greater than the latter. Do gentlemen expect that a ſyſtem expanded over the whole union is to coſt no more

than the eſtabliſhment of a ſingle ſtate ? Let it be remembered, ſir, that the judiciary is an integral and co-ordinate part with the higheſt branches of the government.—No government can long exiſt without an efficient judiciary. It is the judiciary which applies the law and enables the executive to carry it into effect. Leave your laws to the judiciaries of the ſtates to execute, and my word for it, in ten years you have neither law nor conſtitution. Is your judiciary ſo coſtly that you will not ſupport it ? Why then lay out ſo much money upon the other branches of your government ? I beg that it will be recollected that if your judiciary coſts you thouſands of dollars, your legiſlature coſts you hundreds of thouſands, and your executive millions.

An objection has been derived from the paucity of cauſes in the federal courts, and the objection has been magnified by the allegation, that the number had been annually decreaſing. The facts admitted, I draw a very different inference from my opponents. In my opinion they furniſh the ſtrongeſt proof of the defects of the former eſtabliſhment, and of the neceſſity of a reform. I have no doubt, nay, I know it to be a fact, that many ſuitors were diverted from thoſe tribunals by the fluctuations to which they were ſubject. Allow me however, to take ſome notice of the facts. They are founded upon the Preſidential document, No. 8. Taking the facts as there ſtated, they allow upwards of 50 ſuits annually for each court, when it is conſidered that theſe cauſes muſt each have exceeded the value of 500 dols. and that they were generally litigated caſes, I do not conceive, that there is much ground to affirm, that the courts were without buſineſs. But, ſir, I muſt be excuſed for ſaying, I pay little reſpect to this document. It has been ſhewn by others in ſeveral points to be erroneous, and from my own knowledge, I know it to be incorrect. What right had the preſident to call upon the clerks to furniſh him with a liſt of the ſuits which had been brought or were depending in their reſpective courts ? Had this been directed by Congreſs, or was there any money appropriated to pay the expenſe ? Is there any law which made it the duty of the clerks to obey the order of the executive ? Are the clerks reſponſible for refuſing the liſts, or for making falſe or defective returns ? Do we know any thing about the authenticity of the certificates made by the clerks ? And are we not now aiming a mortal blow at one branch of the government, upon the credit, and at the inſtigation of another and a rival department ? Yes, ſir, I ſay at the inſtigation of the Preſident, for I conſider this buſineſs wholly as a Preſidential meaſure. This document and his meſſage, ſhew that it originated with him; I conſider it as now proſecuted by him, and I believe, that he has the power to arreſt its progreſs, or to accompliſh its completion. I repeat that it is his meaſure. I hold him reſponſible for it ; and I truſt in God that the time will come, when he will be called upon to anſwer for it as his act. And I truſt the time will arrive, when he will hear us ſpeaking upon the ſubject more effectually.

It has been ſtated as the reproach, ſir, of the bill of the laſt ſeſſion, that it was made by a party at the moment when they were ſen-

ſible, that their power was expiring and paſſing into other hands. It is enough for me, that the full and legitimate power exiſted. The remnant was plenary and efficient. And it was our duty to employ it according to our judgments and conſciences for the good of the country. We thought the bill a ſalutary meaſure, and there was no obligation upon us to leave it as a work for our ſucceſſors. Nay, ſir, I have no heſitation in avowing, that I had no confidence in the perſons who were to follow us. And I was the more anxious while we had the means to accompliſh a work which I believed they would not do, and which I ſincerely thought would contribute to the ſafety of the nation by giving ſtrength and ſupport to the conſtitution through the ſtorm to which it was likely to be expoſed. The fears, which I then felt, have not been diſpelled, but multiplied by what I have ſince ſeen. I know nothing which is to be allowed to ſtand. I obſerve the inſtitutions of the government falling around me, and where the work of deſtruction is to end God alone knows. We diſcharged our conſciences in eſtabliſhing a judicial ſyſtem, which now exiſts, and it will be for thoſe who now hold the power of the government to anſwer for the abolition of it, which they at preſent meditate. We are told, that our law was againſt the ſenſe of the nation. Let me tell thoſe gentlemen, they are deceived, when they call themſelves the nation. They are only a dominant party, and though the ſun of federaliſm ſhould never riſe again, they will ſhortly find men better or worſe than themſelves thruſting them out of their places. I know it is the cant of thoſe in power, however they have acquired it, to call themſelves the nation. We have recently witneſſed an example of it abroad. How rapidly did the nation change in France, at one time Briſſot called himſelf the nation—then Robeſpierre, afterwards Tallien and Barras, and finally Buonaparte. But their dreams were ſoon diſſipated, and they awoke in ſucceſſion upon the ſcaffold, or in baniſhment. Let not theſe gentlemen flatter themſelves, that heaven has reſerved for them a peculiar deſtiny. What has happened to others in this country they muſt be liable to. Let them not exult too highly in the enjoyment of a little brief and fleeting authority. It was ours yeſterday, it is theirs to-day, but to-morrow it may belong to others.

[Mr. Bayard here ſtated, that he had gone through the remarks he had to make connected with the firſt point of the debate; that he obſerved, that the common hour of adjournment had gone by, and that he ſhould ſit down in order to allow the committee to riſe, if they thought proper; and that he ſhould beg leave to be heard the following day upon the ſecond point. After ſome converſation, the committee roſe, reported—and the Houſe adjourned.]

SATURDAY, *February* 20, 1802.

I owe to the committee the expreſſion of my thanks for the patience with which they attended to the laborious diſcuſſion of yeſterday.

It will be my endeavour in the remarks which I have to offer upon the remaining point of the debate, to conſume no time which the

importance of the ſubject does not juſtify. I have never departed from the queſtion before the committee, but with great reluctance. Before I heard the gentleman from Virginia, I had not an obſervation to make unconnected with the bill on the table. It was he who forced me to wander on foreign ground, and be aſſured, ſir, I ſhall be guilty of no new digreſſions where I am not covered by the ſame juſtification.

I did think that this was an occaſion when the Houſe ought to have been liberated from the dominion of party ſpirit, and allowed to decide upon the unbiaſſed dictates of their underſtanding. The vain hope which I indulged that this courſe would be purſued was ſoon diſſipated by the inflammatory appeal made by the gentleman from Virginia, to the paſſions of his party. This appeal, which treated with no reſpect the feelings of one ſide of the Houſe, will excuſe recriminations which have been made, or which ſhall be retorted. We were diſpoſed to conciliate, but gentlemen are deceived if they think that we will ſubmit to be trampled on.

I ſhall now, ſir, proceed to the conſideration of the ſecond point which the ſubject preſents. However this point may be diſguiſed by ſubtilties, I conceive the true queſtion to be—has the legiſlature a right by a law to remove a judge? Gentlemen may ſtate their queſtion to be, has the legiſlature a right by law to vacate the office of a judge? But, as in fact they remove the judges, they are bound to anſwer our queſtion.

The queſtion which I ſtate they will not meet. Nay, I have conſidered it as conceded upon all hands, that the legiſlature have not the power of removing a judge from his office; but it is contended only that the office may be taken from the judge. Sir, it is a principle in law, which ought, and I apprehend does, hold more ſtrongly in politics; that what is prohibited from being done directly is reſtrained from being done indirectly. Is there any difference but in words between taking the office from a judge and removing the judge from the office? Do you not indirectly accompliſh the end, which you admit is prohibited. I will not ſay that it is the ſole intention of the ſupporters of the bill before us, to remove the circuit judges from their offices; but I will ſay that they eſtabliſh a precedent, which will enable worſe men than themſelves to make uſe of the legiſlative power for that purpoſe upon any occaſion. If it be conſtitutional to vacate the office, and in that way to diſmiſs the judge, can there be a queſtion as to the power to re-create the office and to fill it with another man? Repeal to-day the bill of the laſt ſeſſion, and the circuit judges are no longer in office. To-morrow reſcind this repealing act (and no one will doubt the right to do it) and no effect is produced but the removal of the judges. To ſuppoſe that ſuch a caſe may occur is no vagary of imagination. The thing has been done, ſhameleſsly done in a neighboring ſtate. The judges there held their offices upon the ſame tenure with the judges of the United States. Three of them were obnoxious to the men in power. The judicial law of the ſtate was repealed, and immediately re-enact-

ed without a veil being thrown over the tranſaction. The obnoxious men were removed, their places ſupplied with new characters, and the other judges were re-appointed. Whatever ſophiſtry may be able to ſhew in theory, in practice there never will be found a difference in the exerciſe of the powers of removing a judge and of vacating his office.

The queſtion, which we are now conſidering, depends upon the proviſions contained in the conſtitution. It is an error of the committee, upon plain ſubjects to ſearch for reaſons very profound. Upon the preſent ſubject the ſtrong proviſions of the conſtitution are ſo obvious, that no eye can overlook them. They have been repeatedly cited, and as long as the queſtion ſtated is under diſcuſſion, they muſt be reiterated. There are two prominent proviſions to which I now particularly allude. 1ſt The judges ſhall hold their offices during good behavior. 2d. Their compenſation ſhall not be diminiſhed during their continuance in office. Theſe are proviſions ſo clearly underſtood upon the firſt impreſſion, that their meaning is rather obſcured than illuſtrated by argument. What is meant, and what has been univerſally underſtood by the tenure of "good behaviour?" *A tenure for life* if the judge commit no miſdemeanor. It is ſo underſtood and expreſſed in England, and ſo it has always been received and admitted in this country. The *expreſs* proviſion then of the conſtitution defines the tenure of a judge's office; a tenure during life.—How is that tenure *expreſsly* qualified? By the good behaviour of the judge.—Is the tenure qualified by any other *expreſs* condition or limitation? No other. As the tenure is *expreſs*, as but one *expreſs* limitation is impoſed upon it, can it be ſubject to any other limitation not derived from neceſſary implication. If any material proviſion in the conſtitution can in no other manner be ſatisfied, than by ſubjecting the tenure of this office to ſome new condition, I will then admit that the tenure is ſubject to the condition.

Gentlemen have ventured to point out a proviſion which they conceived furniſhed this neceſſary implication. They refer to the power given to Congreſs from time to time to eſtabliſh courts inferior to the ſupreme court. If this power cannot be exerciſed without vacating the offices of exiſting judges, I will concede that thoſe offices may be vacated. But on this head there can be no controverſy. The power has been, and at all times may be exerciſed without vacating the office of any judge. It was ſo exerciſed at the laſt ſeſſion of Congreſs: and I ſurely do not now diſpute the right of gentlemen to eſtabliſh as many new courts as they may deem expedient. The power to eſtabliſh new courts does not therefore neceſſarily imply a power to aboliſh the offices of exiſting judges, becauſe the exiſtence of thoſe offices does not prevent an execution of the power.

The clauſe in the conſtitution to which I have juſt alluded has furniſhed to gentlemen their famous poſition, that though you cannot remove a judge from his office, you may take the office from the judge. Though I ſhould be in order, I will not call this a quibble,

but I ſhall attempt, in the courſe of the argument, yet more clearly to prove that it is one. I do not contend that you cannot aboliſh an empty office, but the point on which I rely is, that you can do no act which impairs the independence of a judge.—When gentlemen aſſert that the office may be vacated notwithſtanding the incumbency of the judge, do they conſider that they beg the very point which is in controverſy. The office cannot be vacated without violating the expreſs proviſion of the conſtitution in relation to the tenure.

The judge is to hold his office during good behaviour. Does he hold it when it is taken from him? Has the conſtitution ſaid, that he ſhall hold the office during good behaviour, unleſs Congreſs ſhall deem it expedient to aboliſh the office? If this limitation has been omitted, what authority have we to make a part of the conſtitution.

The ſecond plain, unequivocal proviſion, on this ſubject is, that the compenſation of the judge ſhall not be diminiſhed during the time he continues in office. This proviſion is directly leveled at the power of the legiſlature. They alone could reduce the ſalary. Could this proviſion have any other deſign than to place the judge out of the power of Congreſs; and yet how imperfect and how abſurd the plan. You cannot reduce a part of the compenſation, but you may extinguiſh the whole. What is the ſum of this notable reaſoning? You cannot remove the judge from the office but you may take the office from the judge. You cannot take the compenſation from the judge, but you may ſeparate the judge from the compenſation.

If your conſtitution cannot reſiſt reaſoning like this, then indeed is it waſte paper.

I will here turn aſide, in order to conſider a variety of arguments drawn from different ſources, on which gentlemen on the other ſide have placed a reliance. I know of no order in which they can be claſſed, and I ſhall take them up as I meet with them on my notes. It was urged by the honorable member from Virginia to whom I have ſo frequently referred, that what was created by law, might by law be annihilated. In the application of his principle, he diſcloſed views which I believe, have not yet been contemplated by gentlemen of his party. He was induſtrious to ſhew that not only the inferior courts but the ſupreme court derives its exiſtence from law. The preſident and legiſlature exiſt under the conſtitution. They came into being without the aid of a law. But though the conſtitution ſaid, there ſhould be a ſupreme court, no judges could exiſt till the court was organized by a law. This argument, I preſume, was puſhed to this extent in order to give notice to the judges of the ſupreme court of their fate and to bid them prepare for their end.

I ſhall not attempt to diſcriminate between the tenure of the offices of the judges of the ſupreme and inferior courts. Congreſs has power to organize both deſcriptions of courts, and to limit the number of judges, *but they have no power to limit or define the tenure of office.* Congreſs creates the office; the Preſident appoints the officer, but it

is neither under Congreſs or the Preſident, but under the conſtitution, that the judge claims to hold the office during good behaviour. The principle aſſerted does not in this caſe apply ; the tenure of office is not created by law, and if the truth of the principle were admitted, it would not follow, that the tenure of the office might be vacated by law. But the principle is not ſound. I will ſhew a variety of caſes which will prove its fallacy. Among the obnoxious meaſures of the late adminiſtration, was the loan of five millions, which was funded at 8 per cent. The loan was created by a law and funded by law. Is the gentleman prepared to ſay, that this debt, which was funded by a law of the former legiſlature, may be extinguiſhed by a law of the preſent. Can you, by calling the intereſt of this debt, exorbitant and uſurious, juſtify the reduction of it ? Gentlemen admit that the ſalary of a judge, though eſtabliſhed by a law, cannot be diminiſhed by a law. The ſame thing muſt be allowed with reſpect to the ſalary of the Preſident. Sir, the true principle is, that one legiſlature may repeal the act of a former, in caſes not prohibited by the conſtitution. The correct queſtion therefore is, whether the legiſlature are not forbidden by the conſtitution to abridge the tenure of a judicial office ?

In order to avoid caſes of a nature ſimilar to thoſe which I have put, the gentleman from Kentucky, (Mr. Davis,) and after him the gentleman from Virginia, endeavored to draw a diſtinction between laws executed, and laws executory.

The diſtinction was illuſtrated by reference to the caſe of a ſtate admitted by law into the union. Here it is ſaid the law is executed, and functus officio, and if you repeal it, ſtill the ſtate remains a member of the union. But it was aſked by the gentleman from Kentucky, ſuppoſing a law made to admit a ſtate into the union, at a future time, before the time of admiſſion arrived, could not the law be repealed. I will anſwer the queſtion to the ſatisfaction of the gentleman, by ſtating a caſe which exiſts. By an ordinance of congreſs, in the year 1787, congreſs ordained, that when the population within the limits of a ſtate within the North-Weſtern Territory, ſhould amount to 60,000 ſouls—the diſtrict ſhould be admitted as a member of the union. Will the gentleman venture to doubt as to this caſe ? Would he dare to tell the people of this country, that congreſs had the power to disfranchiſe them.

The law, in the caſe I refer to, is executory, though the event upon which it is to take effect is limited by population and not by time ?

But, ſir, if there were any thing in the principle, it has no influence upon the caſe to which it has been applied. A law has created the office of a judge, the judge has been appointed and the office filled. The law is therefore executed, and upon the very diſtinction of the gentleman, cannot be repealed. The law fixing the compenſation is executory, and ſo is that which eſtabliſhes the ſalary of the Preſident, but though executory, they cannot be repealed. The diſtinction therefore is idle, and leaves the queſtion upon the ground

of the repeal, being permitted or prohibited by the conſtitution. I ſhall now advert, ſir, to an argument urged with great force and not a little triumph, by the honorable member from Virginia. This argument is derived from the word, 'hold' in the expreſſion, the judge ſhall *hold* his office during good behavior. It is conſidered as correlative to tenure. The gentleman remarks, that the conſtitution provides, that the Preſident ſhall nominate the judge to his office, and when approved by the ſenate, ſhall commiſſion him. It is hence inferred, that as the Preſident nominates and commiſſions the judge, the judge *holds* the office of the Preſident; and that when the conſtitution provides, that the tenure of the office ſhall be during good behavior, the proviſion applies to the Preſident, and reſtrains the power, which otherwiſe would reſult in conſequence of the offices being *holden* of him, to remove the judges at will. This is an argument, ſir, which I ſhould have thought, that honorable member would have been the laſt perſon upon this floor to have adopted. It not only imputes to the Preſident royal attributes, but prerogatives, derived from the rude doctrines of the feudal law. Does the gentleman mean to contend, that the Preſident of theſe ſtates, like the monarch of England, is the fountain of honor, of juſtice and of office? Does he mean to contend, that the courts are the Preſident's courts, and the judges, the Preſident's judges? Does he mean to ſay, ſir, that the chief magiſtrate is always ſuppoſed to be preſent in theſe courts, and that the judges are but the images of his juſtice? To ſerve the paltry purpoſes of this argument, would the gentleman be willing to infuſe into our conſtitution, the vital ſpirit of the feudal doctrines? He does not believe, he cannot believe that when the word 'hold' was employed, any reference was had to its feudal import. The language of the conſtitution furniſhes no ſupport to this feudal argument. Theſe officers are not called the judges of the Preſident, but the judges of the United States. They are a branch of the government equally important, and deſigned to be co-ordinate with the Preſident. If, ſir, becauſe the Preſident nominates to office and commiſſions, the office is held of him, for a ſtronger reaſon where by patent he grants lands of the United States, the lands are held of him. And upon the grantee's dying without heirs, the lands would eſcheat not to the United States, but to the Preſident. In England, the tenure of lands and offices is derived from the ſame principle. All lands are held mediately, or immediately of the crown, becauſe they are ſuppoſed to have been originally acquired from the perſonal grant of the monarch. It is the ſame of office, as the king is ſuppoſed to be the ſource of all offices. Having the power to grant, he has a right to define the terms of the grant. Theſe terms conſtitute the tenure. When the terms fail, the tenure ceaſes, and the object of the grant reverts to the grantor. This gentleman has charged others with monarchical tendencies, but never have I before witneſſed an attempt ſo bold and ſtrong to incorporate in our conſtitution, a rank monarchical principle. If, ſir, the principle of our conſtitution on this ſubject be republican, and not monarchical, and the judges hold

their offices of the United States, and not of the Preſident, then the application of his argument has all the force againſt the gentleman, which he deſigned it ſhould have againſt his adverſaries. For if the office be held of the United States, and the tenure of good behavior was deſigned to reſtrain the power of thoſe of whom the office was holden, it will follow, that it was the intention to reſtrain the power of the United States.

We were told by an honorable gentleman from Virginia, who roſe early in the debate, (Mr. Thompſon) that the principles we advocated tended to eſtabliſh a ſinecure ſyſtem in the country. Sir, I am as little diſpoſed to be acceſſary to the eſtabliſhment of ſuch a ſyſtem, as any gentleman on this floor. But let me aſk how this ſyſtem is to be produced? We eſtabliſhed judicial offices, to which numerous and important duties were aſſigned. A compenſation has been allowed to the judges, which no one will ſay, is immoderate, or diſproportioned to the ſervice to be rendered. Theſe gentlemen firſt aboliſh the duties of the offices, then call the judges penſioners, and afterwards accuſe us of eſtabliſhing ſinecures. There are no penſioners at preſent, if there ſhould be any, they will be the creatures of this law. I have ever conſidered it as a ſound and moral maxim, that no one ſhould avail himſelf of his own wrong. It is a maxim, which ought to be equally obligatory upon the public as upon the private man. In the preſent caſe, the judge offers you his ſervice. You cannot ſay, it is not worth the money you pay for it. You refuſe to accept the ſervice; and after engaging to pay him while he continued to perform the ſervice, you deny him his compenſation, becauſe he neglects to render ſervices which you have prevented him from performing. Was injuſtice ever more flagrant? Surely, ſir, the judges are innocent. If we did wrong, why ſhould they be puniſhed and diſgraced? They did not paſs the obnoxious law, they did not create the offices, they had no participation in the guilty buſineſs; but they were invited upon the faith of government, to renounce their private profeſſions, to relinquiſh the emolument of other employments, and to enter into the ſervice of the United States, who engaged to retain them during their lives, if they were guilty of no miſconduct. They have behaved themſelves well, unexceptionably well, when they find the government reſcinding the contract made with them, refuſing the ſtipulated price of their labour, diſmiſſing them from ſervice, and in order to cover the ſcandalous breach of faith, ſtigmatizing them with names which may render them odious to their countrymen. Is there a gentleman on the floor of this Houſe, who would not revolt at ſuch conduct in private life? Is there one who would feel himſelf juſtified, after employing a perſon for a certain time, and agreeing to pay a certain compenſation, to diſmiſs the party from the ſervice upon any caprice which altered his views, deny him the ſtipulated compenſation, and to abuſe him with opprobrious names, for expecting the benefit of the engagement?

A bold attempt was made by one of the gentlemen from Virginia,

(Mr. Giles) to force to his aid the Statute of 13th Wm. 3d. I call it a bold attempt, becauſe the gentleman was obliged to rely upon his own aſſertion to ſupport the ground of his argument. He ſtated, that the clauſe in the conſtitution was borrowed from a ſimilar proviſion in the Statute. I know nothing about the fact, but I will allow the gentleman its full benefit. In England at an earlier period, the judges held their commiſſions during the good pleaſure of the monarch. The parliament deſired, and the king conſented, that the royal prerogative ſhould be reſtrained. That the offices of the judges ſhould not depend on the will of the crown alone, but upon the joint pleaſure of the crown and of parliament. The king conſented to part with a portion of his prerogative by relinquiſhing his power to remove the judges without the advice of his parliament. *But by an expreſs clauſe in the ſtatute, he* retained the authority to remove them with the advice of his parliament. Suppoſe the clauſe had been omitted, which reſerved the right to remove upon the addreſs of the two Houſes of parliament, and the Statute had been worded in the unqualified language of our conſtitution, that the judges ſhould hold their offices during good behaviour, would not the prerogative of removal have been aboliſhed altogether ? I will not ſay that the honorable member has been peculiarly unfortunate in the employment of this argument, becauſe, ſir, it appears to me, that moſt to which he has had recourſe, when juſtly conſidered, have operated againſt the cauſe they were deſigned to ſupport.

The gentleman tells us that the conſtitutional proviſion on this ſubject was taken from the ſtatute of William.—Will he anſwer me this plain queſtion ? Why do we find omitted in the conſtitution, that part of the ſtatutory proviſion, which allowed the judges to be removed upon the addreſs of the two branches of the legiſlature ? Does he ſuppoſe that the clauſe was not obſerved ? Does he imagine that the proviſion was dropt through inadvertency ? Will he impute ſo groſs a neglect to an inſtrument every ſentence and word, and comma, of which he has told us was ſo maturely conſidered, and ſo warily ſettled. No, ſir, it is impoſſible ; and give me leave to ſay, that if this part of the conſtitution were taken from the ſtatute (and the gentleman from Virginia muſt have better information on the ſubject than I have) that a ſtronger argument could not be adduced, to ſhew that it was the intention of thoſe who framed the conſtitution, by omitting that clauſe in the ſtatute which made the judges tenants of their offices at the will of Parliament ; to improve in this country the Engliſh plan of judicature, by rendering the judges independent of the legiſlature. And I ſhall have occaſion in the courſe of my obſervations to ſhew, that the ſtrongeſt reaſons derived from the nature of our government, and which do not apply to the Engliſh form, require the improvement to be made.

Upon this point, ſir, we may borrow a few additional rays of light from the conſtitutions of Pennſylvania, of Delaware, and of ſome other ſtates. In thoſe ſtates it has been thought, that there might be miſconduct on the part of a judge, not amounting to an impeachable

offence, for which he ſhould be liable to be removed. Their conſtitutions therefore have varied from that of the United States, and rendered their judges liable to be removed upon the addreſs of *two-thirds* of each branch of the legiſlature. Does it not ſtrike every mind, that it was the intention of thoſe conſtitutions to have judges independent of a *majority* of each branch of the legiſlature; and I apprehend alſo that it may be fairly inferred, that it was underſtood in thoſe ſtates when their conſtitution was formed, that even two-thirds of each branch of the legiſlature would not have the power to remove a judge whoſe tenure of office was during good behaviour, unleſs the power was expreſsly given to them by the conſtitution. I cannot well conceive of any thing more abſurd in an inſtrument deſigned to laſt for centuries and to bind the furious paſſions of party, than to fortify one paſs to judicial independence, and to leave another totally unguarded againſt the violence of Legiſlative power.

It has been urged by the gentleman from Virginia, that our admiſſion that Congreſs has a power to modify the office of judge, leads to the concluſion, that they have the power to aboliſh the office. Becauſe, by paring away their powers they may at length reduce them to a ſhadow, and leave them as humble and as contemptible as a court of piepoudre. The office of a judge conſiſts of judicial powers which he is appointed to execute. Every law which is paſſed increaſes or diminiſhes thoſe powers, and ſo far modifies the office: nay it is competent for the legiſlature to preſcribe additional duties or to diſpenſe with unneceſſary ſervices, which are connected with the office of the judge. But this power has its bounds. You may modify the office to any extent which does not affect the independence of the judge. The judge is to hold the office during good behavior; now modify as you pleaſe, ſo that you do not infringe this conſtitutional proviſion.

Do you aſk me to draw a line and ſay, thus far you can go and no farther. I admit no line can be drawn. It is an affair of ſound and *bona fide* diſcretion. Becauſe a diſcretion on the ſubject is given to the legiſlature, to argue upon the abuſe of that diſcretion is adopting a principle ſubverſive of all legitimate power.

The conſtitution is predicated upon the exiſtence of a certain degree of integrity in man. It has truſted powers liable to enormous abuſe, if all political honeſty be diſcarded. The legiſlature is not limited in the amount of the taxes which they have a right to impoſe nor as to the objects to which they are to be applied. Does this power give us the property of the country, becauſe by taxes we might draw it into the public coffers, and then cut up the treaſury and divide the ſpoils? Is there any power in reſpect to which a preciſe line can be drawn, between the diſcreet exerciſe and the abuſe of it.

I can only ſay therefore on this ſubject, that every man is acquitted to his own conſcience who *bona fide* does not intend, and who ſincerely does not believe, that by the law which he is about to paſs, he interferes with the judges holding their offices during good behavior.

I am now brought, Mr. Chairman, to take notice of ſome remarks which fell from the gentleman from Virginia, which do not belong to the ſubject before us; but are of ſufficient importance to deſerve particular attention. He called our attention in a very impreſſive manner to the ſtate of parties in this houſe at the time when the act of the laſt ſeſſion paſſed. He deſcribes us in a ſtate of blind paroxyſm, incapable of diſcerning the nature or tendency of the meaſures we were purſuing. That a majority of the houſe were ſtruggling to counteract the expreſſion of the public will, in relation to the perſon who was to be the chief magiſtrate of the country.

I did ſuppoſe, ſir, that this buſineſs was at an end, and I did imagine that as gentlemen had accompliſhed their object, they would have been ſatisfied. But as the ſubject is again renewed, we muſt be allowed to juſtify our conduct. I know not what the gentleman calls an expreſſion of the public will. There were two candidates for the office of Preſident, who were preſented to the Houſe of Repreſentatives with equal ſuffrages. The conſtitution gave us the right and made it our duty to elect that one of the two whom we thought preferable. A public man is to notice the public will as conſtitutionally expreſſed. The gentleman from Virginia and many others may have had their preference, but that preference of the public will did not appear by its conſtitutional expreſſion. Sir, I am not certain, that either of thoſe candidates had a majority of the country in his favor. Excluding the ſtate of South-Carolina, the country was equally divided. We know that parties in that ſtate were nearly equally balanced, and the claims of both the candidates were ſupported by no other ſcrutiny into the public will, than our official return of votes. Thoſe votes are very imperfect evidence of the true will of a majority of the nation. They reſulted from political intrigue, and artificial arrangement.

When we look at the votes we muſt ſuppoſe, that every man in Virginia voted the ſame way. Theſe votes are received as a correct expreſſion of the public will. And yet we know, that if the votes of that ſtate were apportioned according to the ſeveral voices of the people, that at leaſt ſeven out of twenty-one, would have been oppoſed to the ſucceſsful candidates. It was the ſuppreſſion of the will of one-third of Virginia, which enables gentlemen now to ſay, that the preſent chief magiſtrate is the man of the people. I conſider that as the public will, which is expreſſed by conſtitutional organs. To that will I bow and ſubmit. The public will, thus manifeſted, gave to the Houſe of Repreſentatives, the choice of the two men for Preſident. Neither of them was the man whom I wiſhed to make Preſident, but my election was confined by the conſtitution to one of the two, and I gave my vote to the one who I thought was the greater and better man. That vote I repeated, and in that vote I ſhould have perſiſted, had I not been driven from it, by imperious neceſſity. The proſpect ceaſed of the vote being effectual, and the alternative only remained of taking one man for Preſident, or having no Preſident at all. I choſe, as I then thought, the leſſer evil.

From the ſcene in this houſe, the gentleman carried us to one in the ſenate. I ſhould bluſh, ſir, for the honor of the country, could I ſuppoſe that the law deſigned to be repealed, owed its ſupport in that body to the motives which have been indicated. The charge deſigned to be conveyed, not only deeply implicates the integrity of individuals of the ſenate, but of the perſon who was then the chief magiſtrate. The gentleman, going beyond all precedent, has mentioned the names of members of that body, to whom commiſſions iſſued for offices not created by the bill before them, but which that bill by the promotions it afforded was likely to render vacant. He has conſidered the ſcandal of the tranſaction, as aggravated by the iſſuing of commiſſions for offices not actually vacant, upon the bare preſumption that they would become vacant, by the incumbents accepting commiſſions, for higher offices which were iſſued in their favor. The gentleman has particularly dwelt upon the indecent appearance of the buſineſs from two commiſſions being held by different perſons at the ſame time, for the ſame office.

I beg that it will be underſtood, that I mean to give no opinion as to the regularity of granting a commiſſion for a judicial office, upon the probability of a vacancy, before it is actually vacant. But I ſhall be allowed to ſay, that ſo much doubt attends the point, that an innocent miſtake might be made on the ſubject. I believe, ſir, it has been the practice to conſider the acceptance of an office, as relating to the date of the commiſſion. The officer is allowed his ſalary from that date, upon the principle that the commiſſion is a grant of the office, and the title commences with the date of the grant. This principle is certainly liable to abuſe, but where there was a ſuſpicion of abuſe, I preſume the government would depart from it. Admitting the office to paſs by the commiſſion, and the acceptance to relate to its date, it then does not appear very incorrect in the caſe of a commiſſion, for the office of a circuit judge, granted to a diſtrict judge, as the acceptance of the commiſſion for the former office relates to the date of the commiſſion, to conſider the latter office as vacant from the ſame time. The offices are incompatible. You cannot ſuppoſe the ſame perſon in both offices at the ſame time. From the moment, therefore, that you conſider the office of circuit judge filled by a perſon who holds the commiſſion of diſtrict judge, you muſt conſider the office of diſtrict judge as vacated. The grant is contingent. If the contingency happen, the office veſts from the date of the commiſſion, if the contingency does not happen the grant is void. If this reaſoning be found, it was not irregular in the late adminiſtration, after granting a commiſſion to a diſtrict judge, for the place of a circuit judge, to make a grant of the office of the diſtrict judge, upon the contingency of his accepting the office of circuit judge. I now return, ſir, to that point of the charge, which was perſonal in its nature, and of infinitely the moſt ſerious import. It is a charge as to which, we can only aſk *is it true?* If it be true, it cannot be excuſed; it cannot be palliated, it is vile, profligate corruption, which every honeſt mind will execrate. But, ſir, we are not to condemn, till we

have evidence of the fact. If the offence be ſerious, the proof ought to be plenary. I will conſider the evidence of the fact, upon which the honorable member has relied, and I will ſhew him by the application of it to a ſtronger caſe, that it is of a nature to prove nothing.

Let me firſt ſtate the principal caſe. Two gentlemen of the ſenate, Mr. Read of South-Carolina, and Mr. Green of Rhode-Iſland, who voted in favor of the law of laſt ſeſſion, each received an appointment to the place of diſtrict judge, which was deſigned to be vacated by the promotion of the diſtrict judge to the office of circuit judge. The gentleman conveyed to us a diſtinct impreſſion of his opinion, that there was an underſtanding between theſe gentlemen and the Preſident, and that the offices were the promiſed price of their votes.

I preſume, ſir, the gentleman will have more charity, in the caſe which I am about to mention, and he will for once admit that public men ought not to be condemned, upon looſe concluſions drawn from equivocal preſumptions.

The caſe, ſir, to which I refer, carries me once more to the ſcene of the Preſidential election. I ſhould not have introduced it into this debate, had it not been called up by the honorable member from Virginia. In that ſcene I had my part, it was a part not barren of incident, and which has left an impreſſion, which cannot eaſily depart from my recollection. I know who were rendered important characters, either from the poſſeſſion of perſonal means, or from the accident of political ſituation. And now, ſir, let me aſk the honorable member, what his reflections and belief will be, when he obſerves that every man, on whoſe vote the event of the election hung, has ſince been diſtinguiſhed by Preſidential favor. I fear, ſir, I ſhall violate the decorum of Parliamentary proceeding, in the mentioning of names, but I hope the example which has been ſet me will be admitted as an excuſe. Mr. Charles Pinckney of South-Carolina was not a member of the houſe, but he was one of the moſt active, efficient, and ſucceſsful promoters of the election of the preſent chief magiſtrate. It was well aſcertained that the votes of South-Carolina were to turn the equal balance of the ſcales. The zeal and induſtry of Mr. Pinckney had no bounds. The doubtful politics of South-Carolina were decided, and her votes caſt into the ſcale of Mr. Jefferſon. Mr. Pinckney has ſince been appointed miniſter plenipotentiary to the court of Madrid. An appointment as high and honorable, as any within the gift of the executive. I will not deny that this preferment is the reward of talents and ſervices, although, ſir, I have never yet heard of the talents or the ſervices of Mr. Charles Pinckney. In the Houſe of Repreſentatives I know what was the value of the vote of Mr. Claiborne of Tenneſſee. The vote of a ſtate was in his hands. Mr. Claiborne, has ſince been raiſed to the high dignity of governor of the Miſſiſippi Territory. I know how great and how greatly felt, was the importance of the vote of Mr. Linn of New-Jerſey. The delegation of the ſtate conſiſts of five members. Two of the delegation were decidedly for Mr. Jefferſon ; two were decidedly for Mr. Burr. Mr. Linn was conſidered as inclining to

one ſide, but ſtill doubtful. Both parties looked up to him for the vote of New-Jerſey. He gave it to Mr. Jefferſon, and Mr. Linn has ſince had the profitable office of ſupervifor of his diſtrict conferred upon him. Mr. Lyon of Vermont was in this inſtance an important man. He neutralized the vote of Vermont. His abſence alone would have given the vote of a ſtate to Mr. Burr. It was too much to give an office to Mr. Lyon: His character was low. But Mr. Lyon's ſon has been handſomely provided for in one of the executive offices. I ſhall add to the catalogue but the name of one more gentleman, Mr. Edward Livingſton, of New-York. I knew well, full well I knew the conſequence of this gentleman. His means were not limited to his own vote—nay, I always conſidered more than the vote of New-York within his power. Mr. Livingſton has been made the attorney for the diſtrict of New-York—the road of preferment has been opened to him—and his brother has been raiſed to the diſtinguiſhed place of miniſter plenipotentiary to the French republic. This catalogue might be ſwelled to a much greater magnitude; but I fear, Mr. Chairman, were I to proceed further, it might be ſuppoſed, that I myſelf harbored the uncharitable ſuſpicions of the integrity of the chief magiſtrate, and of the purity of the gentlemen whom he thought proper to promote, which it is my deſign alone to baniſh from the mind of the honorable member from Virginia. It would be doing me great injuſtice to ſuppoſe, that I have the ſmalleſt deſire, or have had the remoteſt intention to tarniſh the fame of the preſent chief magiſtrate; or of any of the honorable gentlemen who have been the objects of his favor, by the ſtatement which I have made; my motive is of an oppoſite nature. The late Preſident appointed gentlemen to office, to whom he owed no perſonal obligations, but who only ſupported what has been conſidered as a favorite meaſure. This has been aſſumed as a ſufficient ground, not only of ſuſpicion, but of condemnation.

The preſent executive, leaving ſcarcely an exception, has appointed to office, or has by accident, indirectly gratified every man, who had any diſtinguiſhed means in the competition, for the Preſidential office, of deciding the election in his favor. Yet, ſir, all this furniſhes too feeble a preſumption to warrant me to expreſs a ſuſpicion of the integrity of a great officer, or of the probity of honorable men, in the diſcharge of the high functions which they had derived from the confidence of their country. I am ſure, ſir, in this caſe, the honorable member from Virginia is as exempt from any ſuſpicion as myſelf. And I ſhall have accompliſhed my whole object, if I induce that honorable member, and other members of the committee, who entertain his ſuſpicions as to the conduct of the late executive, to review the ground of thoſe ſuſpicions, and to conſider that in a caſe furniſhing much ſtronger ground for the preſumption of criminality, they have an unſhaken belief, an unbroken confidence in the purity and fairneſs of the executive conduct.

I return again to the ſubject before the committee, from the unpleaſant digreſſion to which I was forced to ſubmit, in order to repel

inſinuations which were calculated to have the worſt effect, as well abroad as within the walls of this Houſe. I ſhall now curſorily advert to ſome arguments of minor importance, which are ſuppoſed to have ſome weight by gentlemen on the other ſide. It is ſaid, that if the courts are ſanctuaries and the judges cannot be removed by law, it would be in the power of a party to create a hoſt of them to live as penſioners on the country. This argument is predicated upon an extreme abuſe of power, which can never fairly be urged to reſtrain the legitimate exerciſe of it; as well might it be urged, that a ſubſequent congreſs had a right to reduce the ſalary of a judge, or of the Preſident, fixed by a former congreſs, becauſe if the right did not exiſt, one congreſs might confer a ſalary of 500,000 or 1,000,000 dollars to the impoveriſhment of the country. It will be time enough to decide upon thoſe extreme caſes when they occur. We are told, that the doctrine, we contend for, enables one legiſlature to derogate from the power of another. That it attributes to a former a power which it denies to a ſubſequent legiſlature.

This is not correct. We admit, that this congreſs poſſeſſes all the power poſſeſſed by the laſt congreſs. That congreſs had a power to eſtabliſh courts, ſo has the preſent. That congreſs had not, nor did it claim the power to aboliſh the office of a judge while it was filled. Though they thought five judges under the new ſyſtem ſufficient to conſtitute the ſupreme court, they did not attempt to touch the office of either of the ſix judges. Though they conſidered it more convenient to have circuit judges in Kentucky, and Tenneſſee, than diſtrict judges, they did not lay their hands upon the offices of the diſtrict judges. We therefore deny no power to this congreſs which was not denied to the laſt. An honorable member from Virginia, (Mr. Thompſon) ſeriouſly expreſſed his alarm, leſt the principles we contended for ſhould introduce into the country a priviliged order of men. The idea of the gentleman ſuppoſes that every office not at will eſtabliſhes a priviliged order. The judges have their offices for one term; the Preſident, the ſenators and the members of this Houſe for different terms. While theſe terms endure, there is a privilege to hold the places, and no power exiſts to remove. If this be what the gentleman means by a privileged order, and he agrees, that the Preſident, the Senators and the members of this Houſe belong to privileged orders, I ſhall give myſelf no trouble to deny, that the judges fall under the ſame deſcription; and I believe, that the gentleman will find it difficult to ſhew, that in any other manner they are priviledged. I did not ſuppoſe, that this argument was ſo much addreſſed to the underſtandings of gentlemen upon this floor, as to the prejudices and paſſions of people out of doors.

It was urged with ſome impreſſion by the honorable member from Virginia, to whom I laſt referred, that the poſition that the office of a judge might be taken from him by law, was not a new doctrine. That it was eſtabliſhed by the very act now deſigned to be repealed, which was deſcribed in glowing language to have inflicted a gaping wound on the conſtitution, and to have ſtained with

its blood the pages of our Statute book. It ſhall be my taſk, ſir, to cloſe this gaping wound, and to waſh from the pages of our Statute-book, the blood with which they were ſtained. It will be an eaſy taſk to ſhew to you the conſtitution without a wound, and the Statute-book without a ſtain.

It is, ſir, the 27th ſec. of the bill of the laſt ſeſſion, which the honorable member conſiders as having inflicted the ghaſtly wound on the conſtitution, of which he has ſo feelingly ſpoken. That ſection aboliſhes the ancient circuit courts. But, ſir, have we contended, or has the gentleman ſhewn, that the conſtitution prohibits the abolition of a court when you do not materially affect or in any degree impair the independence of a judge. A court is nothing more than a place where a judge is directed to diſcharge certain duties. There is no doubt, you may erect a new court and direct it to be holden by the judges of the ſupreme or of the diſtrict courts. And if it ſhould afterwards be your pleaſure to aboliſh that court, it cannot be ſaid, that you deſtroy the offices of the judges by whom it was appointed that the court ſhould be holden.

Thus it was directed by the original judicial law, that a circuit court ſhould be holden at York-town, in the diſtrict of Pennſylvania. This court was afterwards aboliſhed, but it was never imagined, that the office of any judge was affected. Let me ſuppoſe that a State is divided into two diſtricts, and diſtrict courts eſtabliſhed in each, but that one judge is appointed by law to diſcharge the judicial duties in both courts. The arrangement is afterwards found inconvenient, and one of the courts is aboliſhed. In this caſe will it be ſaid, that the office of the judge is deſtroyed, or his independence affected? The error, into which gentlemen have fallen on this ſubject, has ariſen from their taking for granted, what they have not attempted to prove, and what cannot be ſupported. That the office of a judge and any court in which he officiates are the ſame thing. It is moſt clear, that a judge may be authorized and directed to perform duties in ſeveral courts, and that the diſcharging him from the performance of duty in one of thoſe courts cannot be deemed an infringement of his office. The caſe of the late circuit courts as plainly illuſtrates the argument, and as concluſively demonſtrates its correctneſs, as any which can be put. There was not nominally any judges of the circuit court. The court was directed to be holden by the judges of the ſupreme and of the circuit courts. The judges of theſe two courts were aſſociated and directed to perform certain duties; when aſſociated and in the performance of thoſe duties, they were denominated the circuit court. This court is aboliſhed; the only conſequence is, that the judges of the ſupreme and diſtrict courts are diſcharged from the performance of the joint duties which were previouſly impoſed upon them. But is the office of one judge of the ſupreme or of the diſtrict courts infringed? Can any judge ſay, in conſequence of the abolition of the circuit courts, I no longer hold my office during good behavior? On this point it was further alledged by the ſame honorable member, that the law of the laſt ſeſſion inflicted

another wound on the conſtitution, by aboliſhing the diſtrict courts of Kentucky and Tenneſſee. The gentleman was here deceived by the ſame fallacy which miſled him on the ſubject of the circuit courts. If he will give himſelf the trouble of carefully reviewing the proviſions of the law, he will diſcern the ſedulous attention of the legiſlature to avoid the infringement of the offices of thoſe judges. I believe the gentleman went ſo far as to charge us with appointing by law thoſe judges to new offices.

The law referred to eſtabliſhes a circuit court, comprehending Kentucky, Tenneſſee and the diſtrict of Ohio. The duties of the court of this circuit are directed to be performed by a circuit judge and the two diſtrict judges of Kentucky and Tenneſſee. Surely it is competent for the legiſlature to create a court, and to direct that it ſhall be holden by any of the exiſting judges. If the legiſlature had done with reſpect to all the diſtrict judges, what they have done with reſpect to thoſe of Kentucky and Tenneſſee, I am quite certain, that the preſent objection would have appeared entirely groundleſs. Had they directed, that all the circuit courts ſhould be held by the reſpective judges within the circuits, gentlemen would have clearly ſeen, that this was only an impoſition of a new duty and not an appointment to a new office.

It will be recollected, that under the old eſtabliſhment, the diſtrict judges of Kentucky and Tenneſſee were inveſted generally with the powers of the circuit judges. The ancient powers of thoſe judges are ſcarcely varied by the late law, and the amount of the change is, that they are directed to exerciſe thoſe powers in a court formerly called a diſtrict, but now a circuit court, and at other places than thoſe to which they were formerly confined. But the diſtrict judge nominally remains, his office both nominally and ſubſtantially exiſts, and he holds it now as he did before during good behavior. I will refer gentlemen to different proviſions in the late law, which will ſhew beyond denial, that the legiſlature carefully and pointedly avoided the act of aboliſhing the *offices* of thoſe judges.

The 7th ſec. of the law provides that the court of the 6th circuit ſhall be compoſed of a circuit judge "*and the judges of the diſtrict courts* of Kentucky and Tenneſſee." It is afterwards declared in the ſame ſection, "that there ſhall be appointed in the ſixth circuit, a judge of the United States to be called a circuit judge, who, together with *the diſtrict judge of Tenneſſee and Kentucky* ſhall hold the circuit courts hereby directed to be holden within the ſame circuit." And finally, in the ſame ſection it is provided, "*that whenever the office of diſtrict judge in the diſtricts of Kentucky and Tenneſſee reſpectively ſhall become vacant* ſuch vacancies ſhall reſpectively be ſupplied by the appointment of two additional circuit judges in the ſaid circuit, who together with the circuit judge firſt aforeſaid, ſhall compoſe the circuit court of the ſaid circuit." When the expreſs language of the law affirms the exiſtence of the office and of the officer, by providing for the contingency of the officer ceaſing to fill the office, with what face can gentlemen contend that the *office* is aboliſhed? They who

are not ſatisfied upon this point, I deſpair of convincing upon any other.

Upon the main queſtion, whether the judges hold their offices at the will of the legiſlature, an argument of great weight and according to my humble judgment, of irreſiſtible force, ſtill remains.

The legiſlative power of the government is not abſolute but limited. If it be doubtful whether the legiſlature can do what the conſtitution does not expreſsly authorize; yet there can be no queſtion, that they cannot do what the conſtitution expreſsly prohibits. To maintain, therefore, the conſtitution, the judges are a check upon the legiſlature. This doctrine I know is denied, and it is therefore incumbent upon me to ſhow that it is ſound.

It was once thought by gentlemen who now deny the principle, that the ſafety of the citizen and of the ſtates, reſted upon the power of the judges to declare an unconſtitutional law void. How vain is a paper reſtriction if it confers neither power nor right. Of what importance is it to ſay, Congreſs are prohibited from doing certain acts, if no legitimate authority exiſts in the country to decide whether an act done is a prohibited act? Do gentlemen perceive the conſequences which would follow from eſtabliſhing the principle, that Congreſs have the excluſive right to decide upon their own powers? This principle admitted, does any conſtitution remain? Does not the power of the legiſlature become abſolute and omnipotent? Can you talk to them of tranſgreſſing their powers, when no one has a right to judge of thoſe powers but themſelves? They do what is not authorized, they do what is inhibited, nay at every ſtep they trample the conſtitution under foot; yet their acts are lawful and binding, and it is treaſon to reſiſt them. How ill, ſir, do the doctrines and profeſſions of theſe gentlemen agree. They tell us they are friendly to the exiſtence of the ſtates; that they are the friends of federative, but the enemies of a conſolidated general government, and yet, ſir, to accompliſh a paltry object, they are willing to ſettle a principle which, beyond all doubt, would eventually plant a conſolidated government, with unlimited power upon the ruins of the ſtate governments.

Nothing can be more abſurd than to contend that there is a practical reſtraint upon a political body who are anſwerable to none but themſelves for the violation of the reſtraint, and who can derive from the very act of violation, undeniable juſtification of their conduct.

If, Mr. Chairman, you mean to have a conſtitution, you muſt diſcover a power to which the acknowledged right is attached of pronouncing the invalidity of the acts of the legiſlature which contravene the inſtrument.

Does the power reſide in the ſtates? Has the legiſlature of a ſtate a right to declare an act of Congreſs void? This would be erring upon the oppoſite extreme. It would be placing the general government at the feet of the ſtate governments. It would be allowing one member of the union to control all the reſt. It would inevitably lead to civil diſſention and a diſſolution of the general government. Will

it be pretended that the ſtate courts have the excluſive right of deciding upon the validity of our laws ?

I admit they have the right to declare an act of Congreſs void. But this right they enjoy in practice, and it ever eſſentially muſt exiſt ſubject to the reviſion and control of the courts of the United States. If the ſtate courts definitively poſſeſſed the right of declaring the invalidity of the laws of this government, it would bring us in ſubjection to the ſtates. The judges of thoſe courts, being bound by the laws of the ſtate, if a ſtate declared an act of Congreſs unconſtitutional, the law of the ſtate would oblige its courts to determine the law invalid. This principle would alſo deſtroy the uniformity of obligation upon all the ſtates, which ſhould attend every law of this government. If a law were declared void in one ſtate, it would exempt the citizens of that ſtate from its operation, whilſt obedience was yielded to it in the other ſtates. I go farther, and ſay, if the ſtates or ſtate courts had a final power of annulling the acts of this government, its miſerable and precarious exiſtence would not be worth the trouble of a moment to preſerve.

It would endure but a ſhort time, as a ſubject of deriſion, and waſting into an empty ſhadow would quickly vaniſh from our ſight. Let me now aſk if the power to decide upon the validity of our laws reſides with the people. Gentlemen cannot deny this right to the ſovereign people. I admit they poſſeſs it. But if at the ſame time it does not belong to the courts of the United States, where does it lead the people ? It leads them to the gallows. Let us ſuppoſe that Congreſs, forgetful of the limits of their authority, paſs an unconſtitutional law. They lay a direct tax upon one ſtate and impoſe none upon the others. The people of the ſtate taxed, conteſt the validity of the law. They forcibly reſiſt its execution. They are brought by the executive authority before the courts upon charges of treaſon. The law is unconſtitutional, the people have done right, but the court are bound by the law and obliged to pronounce upon them the ſentence which it inflicts. Deny to the courts of the United States, the power of judging upon the conſtitutionality of our laws, and it is vain to talk of its exiſting elſewhere. The infractors of the laws are brought before theſe courts, and if the courts are implicitly bound, the invalidity of the laws can be no defence. There is, however, Mr. Chairman, ſtill a ſtronger ground of argument upon this ſubject. I ſhall ſelect one or two caſes to illuſtrate it. Congreſs are prohibited from paſſing a bill of attainder ; it is alſo declared in the conſtitution that " no attainder of treaſon ſhall work corruption of blood or forfeiture, except during the life of the party attainted." Let us ſuppoſe that Congreſs paſs a bill of attainder, or they enact that any one attainted of treaſon ſhall forfeit to the uſe of the United States all the eſtate which he held in any lands or tenements.

The party attainted is ſeized and brought before a federal court, and an award of execution paſſed againſt him. He opens the conſtitution and points to this line, " no bill of attainder or ex poſt facto

law ſhall be paſſed." The attorney for the United States reads the bill of attainder.

The court are bound to decide, but they have only the alternative of pronouncing *the law or the conſtitution invalid.* It is left to them only to ſay that the law vacates the conſtitution, or the conſtitution avoids the law. So in the other caſe ſtated, the heir after the death of his anceſtor, brings his ejectment in one of the courts of the United States to recover his inheritance. The law by which it is confiſcated is ſhewn. The conſtitution gave no power to paſs ſuch a law. On the contrary it expreſsly denied it to the government. The title of the heir is reſted on the conſtitution, the title of the government on the law. The effect of one deſtroys the effect of the other; the court muſt determine which is effectual.

There are many other caſes, Mr. Chairman, of a ſimilar nature to which I might allude. There is the caſe of the privilege of Habeas Corpus, which cannot be ſuſpended but in times of rebellion or of invaſion. Suppoſe a law prohibiting the iſſuing of the writ at a moment of profound peace. If in ſuch caſe the writ were demanded of a court, could they ſay, it is true the legiſlature were reſtrained from paſſing the law, ſuſpending the privilege of this writ, at ſuch a time as that which now exiſts, but their mighty power has broken the bonds of the conſtitution, and fettered the authority of the court. I am not, Sir, diſpoſed to vaunt, but ſtanding on this ground I throw the gauntlet to any champion upon the other ſide. I call upon them to maintain, that in a colliſion between a law and the conſtitution, the judges are bound to ſupport the law, and annul the conſtitution. Can the gentlemen relieve themſelves from this dilemma? Will they ſay, though a judge has no power to pronounce a law void, he has a power to declare the conſtitution invalid.

The doctrine for which I am contending is not only clearly inferable from the plain language of the conſtitution, but by law has been expreſsly declared and eſtabliſhed in practice ſince the exiſtence of the government.

The 2d ſection of the 3d article of the conſtitution expreſsly extends the judicial power to all caſes ariſing under the conſtitution, the laws, &c. The proviſion in the 2d clauſe of the 6th article leaves nothing to doubt. "This conſtitution and *the laws of the United States which ſhall be made in purſuance thereof, &c.* ſhall be the ſupreme law of the land." The conſtitution is abſolutely the ſupreme law. Not ſo of the acts of the legiſlature. Such only are the law of the land as are made *in purſuance of the conſtitution.*

I beg the indulgence of the committee one moment, while I read the following proviſion from the 25th ſect. of the judicial act of the year 1789: "A final judgment or decree in any ſuit in the higheſt court of law or equity of a ſtate in which a deciſion in the ſuit could be had, *where is drawn in queſtion the validity of a treaty or ſtatute of, or an authority exerciſed under the United States,* and the *deciſion is againſt their validity, &c.* may be re-examined and reverſed or *affirmed* in the ſupreme court of the United States upon a writ of error."

Thus, as early as the year 1789, among the firſt acts of the government, the legiſlature explicitly recognized the right of a ſtate court to declare a treaty, a ſtatute, and an authority exerciſed under the United States void, ſubject to the reviſion of the ſupreme court of the United States; and it has expreſsly given the final power to the ſupreme court to affirm a judgment which is againſt the validity either of a treaty, ſtatute or an authority of the government.

I humbly truſt Mr. Chairman, that I have given abundant proofs from the nature of our government, from the language of the conſtitution, and from legiſlative acknowledgment, that the judges of our courts have the power to judge and determine upon the conſtitutionality of our laws.

Let me now ſuppoſe that in our frame of government the judges are a check upon the legiſlature; that the conſtitution is depoſited in their keeping. Will you ſay afterwards that their exiſtence depends upon the legiſlature? That the body whom they are to check has the power to deſtroy them? Will you ſay that the conſtitution may be taken out of their hands, by a power the moſt to be diſtruſted, becauſe the only power which could violate it with impunity? Can any thing be more abſurd than to admit, that the judges are a check upon the legiſlature, and yet to contend that they exiſt at the will of the legiſlature? A check muſt neceſſarily imply a power commenſurate to its end. The political body deſigned to check another muſt be independent of it, otherwiſe there can be no check. What check can there be when the power deſigned to be checked can annihilate the body which is to reſtrain it.

I go farther, Mr. Chairman, and take a ſtronger ground. I ſay in the nature of things the dependence of the judges upon the legiſlature, and their right to declare the acts of the legiſlature void, are repugnant and cannot exiſt together. The doctrine, ſir, ſuppoſes two rights—firſt the right of the legiſlature to deſtroy the office of the judge, and the right of the judge to vacate the act of the legiſlature. You have a right to aboliſh by a law, the offices of the judges of the circuit courts.—They have a right to declare your law void. It unavoidably follows in the exerciſe of theſe rights, either that you deſtroy their rights, or that they deſtroy yours. This doctrine is not an harmleſs abſurdity, it is a moſt dangerous hereſy. It is a doctrine which cannot be practiſed without producing not diſcord only, but bloodſhed. If you paſs the bill upon your table the judges have a conſtitutional right to declare it void. I hope they will have courage to exerciſe that right; and if, ſir, I am called upon to take my ſide, ſtanding acquitted in my conſcience and before my God, of all motives but the ſupport of the conſtitution of my country, I ſhall not tremble at the conſequences.

The conſtitution may have its enemies, but I know that it has alſo its friends. I beg gentlemen to pauſe before they take this raſh ſtep. There are many, very many who believe, if you ſtrike this blow, you inflict a mortal wound on the conſtitution. There are many now willing to ſpill their blood to defend that conſtitution. Are

gentlemen diſpoſed to riſk the conſequences ? Sir, I mean no threats —I have no expectation of appalling the ſtout hearts of my adverſaries ; but if gentlemen are regardleſs of themſelves, let them conſider their wives and children, their neighbors and their friends. Will they riſk civil diſſention ; will they hazard the welfare, will they jeopardize the peace of the country, to ſave a paltry ſum of money, leſs than thirty thouſand dollars.

Mr. Chairman, I am confident that the friends of this meaſure are not apprized of the nature of its operation, nor ſenſible of the miſchievous conſequences which are likely to attend it. Sir, the morals of your people, the peace of the country, the ſtability of the government, reſt upon the maintenance of the independence of the judiciary. It is not of half the importance in England, that the judges ſhould be independent of the crown, as it is with us, that they ſhould be independent of the legiſlature. Am I aſked, would you render the judges ſuperior to the legiſlature ? I anſwer, no, but co-ordinate. Would you render them independent of the legiſlature ? I anſwer, yes, independent of every power on earth, while they behave themſelves well. The eſſential intereſts, the permanent welfare of ſociety, require this independence. Not, ſir, on account of the judge ; that is a ſmall conſideration, but on account of thoſe between whom he is to decide. You calculate on the weakneſſes of human nature, and you ſuffer the judge to be dependant on no one, leſt he ſhould be partial to thoſe on whom he depends. Juſtice does not exiſt where partiality prevails. A dependant judge cannot be impartial. Independence is therefore eſſential to the purity of your judicial tribunals.

Let it be remembered, that no power is ſo ſenſibly felt by ſociety, as that of the judiciary. The life and property of every man, is liable to be in the hands of the judges. Is it not our great intereſt, to place our judges upon ſuch high ground, that no fear can intimidate, no hope can ſeduce them ? The preſent meaſure humbles them in the duſt, it proſtrates them at the feet of faction, it renders them the tools of every dominant party. It is this effect which I deprecate, it is this conſequence which I deeply deplore. What does reaſon, what does argument avail, when party ſpirit preſides ? Subject your bench to the influence of this ſpirit, and juſtice bids a final adieu to your tribunals. We are aſked, ſir, if the judges are to be independent of the people ? The queſtion preſents a falſe and deluſive view. We are all the people. We are, and as long as we enjoy our freedom, we ſhall be divided into parties. The true queſtion is, ſhall the judiciary be permanent, or fluctuate with the tide of public opinion ? I beg, I implore gentlemen, to conſider the magnitude and value of the principle which they are about to annihilate. If your judges are independent of political changes, they may have their preferences, but they will not enter into the ſpirit of party. But let their exiſtence depend upon the ſupport of the power of a certain ſet of men, and they cannot be impartial. Juſtice will be trodden under foot. Your courts will loſe all public confidence and reſpect.

The judges will be ſupported by their partizans, who in their turn will expect impunity for the wrongs and violence they commit. The ſpirit of party will be inflamed to madneſs; and the moment is not far off, when this fair country is to be deſolated by civil war.

Do not ſay, that you render the judges dependent only on the people—you make them dependent on your Preſident. This is his meaſure. The ſame tide of public opinion which changes a Preſident, will change the majorities in the branches of the legiſlature. The legiſlature will be the inſtrument of his ambition, and he will have the courts as the inſtruments of his vengeance. He uſes the legiſlature to remove the judges, that he may appoint creatures of his own. In effect, the powers of the government will be concentrated in the hands of one man, who will dare to act with more boldneſs, becauſe he will be ſheltered from reſponſibility. The independence of the judiciary was the felicity of our conſtitution. It was this principle which was to curb the fury of party upon ſudden changes. The firſt moments of power, gained by a ſtruggle, are the moſt vindictive and intemperate. Raiſed above the ſtorm, it was the judiciary which was to control the fiery zeal, and to quell the fierce paſſions of a victorious faction.

We are ſtanding on the brink of that revolutionary torrent, which deluged in blood one of the faireſt countries of Europe.

France had her national aſſembly, more numerous and equally popular with our own. She had her tribunals of juſtice, and her juries. But the legiſlature and her courts were but the inſtruments of her deſtruction. Acts of proſcription and ſentences of baniſhment and death were paſſed in the cabinet of a tyrant. Proſtrate your judges at the feet of party, and you break down the mounds which defend you from this torrent. I am done. I ſhould have thanked my God for greater power to reſiſt a meaſure ſo deſtructive to the peace and happineſs of the country. My feeble efforts can avail nothing. But it was my duty to make them. The meditated blow is mortal, and from the moment it is ſtruck, we may bid a final adieu to the conſtitution.